

# **INTRODUCTION TO CONTRACTING AND THE FEDERAL ACQUISITION PROCESS**

## **CLASSROOM MATERIALS**

**FEDERAL ACQUISITION INSTITUTE  
OFFICE OF ACQUISITION POLICY  
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# INTRODUCTION

## WHO SHOULD ATTEND?

All personnel who need an introduction to the Federal acquisition system.

Note that this is **not** a course in Small Purchases (i.e., acquisitions under Part 13 of the Federal Acquisition Regulation). The GSA Training Center offers several courses in Small Purchases.

For Contract Specialists (or personnel planning to enter the GS-1102 series), this course describes the Federal acquisition system and introduces 78 duties that are typically assigned at the full performance level. The GSA Training Center offers a complete curriculum of Contract Management courses to systematically develop skill at performing those duties (see page I-6).

For personnel in allied fields (e.g., program management, engineering, supply management, inventory management, logistics, and the like), this course provides a "bird's eye" view of Contracting from the perspective of Contracting Officers. You will have a better understanding of their duties and business decisions, in terms of how you can work with Contracting Officers to make the Federal acquisition system more responsive to your missions.

## PURPOSE

The primary purpose of this course is to answer the following questions:

- What is a contract?
- What are the goals of the Federal acquisition system (i.e., the goals that you should strive to accomplish when you contract for supplies and services)?
- Who regulates and oversees the Federal acquisition system?
- What laws and regulations govern the Federal acquisition system?
- Who are the players in awarding and administering contracts, and what are their respective roles and responsibilities?
- What are the Steps and Basic Business Issues in awarding and administering contracts?
- What Standards of Conduct must you observe?



# LESSON PLAN

TIME	LESSON	OBJECTIVES
<b>Monday</b> 8:00 AM - 10:00 AM  <i>Break</i>	<b>Preface</b>	<ul style="list-style-type: none"> <li>Identify the basic components of the Federal acquisition process.</li> <li>Define significant terms used in Federal contracting.</li> <li>List and describe the essential elements of a contract.</li> <li>Describe how a contract is discharged.</li> </ul>
<b>Monday</b> 10:20 AM- 11:30 AM	<b>1. Goals of the Federal Acquisition Process</b>	<ul style="list-style-type: none"> <li>Identify and define the goals of the Federal acquisition process.</li> </ul>
Optional    <i>Lunch</i>	<b>2. Organizational Roles and Responsibilities</b>	<ul style="list-style-type: none"> <li>State the roles of the legislative, executive, and judicial branches relative to the acquisition process.</li> <li>State the role of the public and non-Government organizations in the acquisition process.</li> </ul>
<b>Monday</b> 12:30 PM - 1:30 PM	<b>3. Basic Statutes and Regulations</b>	<ul style="list-style-type: none"> <li>Identify and describe the four principal sources of Federal Contract Law.</li> <li>Identify the basic statutes that control the fundamentals of purchasing and contracting.</li> <li>Describe the Federal Acquisition Regulatory system—its sources, maintenance, supplements, and usage.</li> </ul>
<b>Monday</b> 1:30 PM - 2:30 PM  <i>Break</i>	<b>4. Acquisition Roles and Responsibilities Within an Agency</b>	<ul style="list-style-type: none"> <li>Describe a typical approach to organizing the acquisition function.</li> <li>Define the Law of Agency.</li> <li>Identify and define the roles and responsibilities of contracting officers, other contracting personnel, requirements managers, contracting officer representatives, and other interested parties.</li> </ul>
<b>Monday</b> 2:50 PM - 3:30 PM	<b>5. Introduction to the Acquisition Process</b>	<ul style="list-style-type: none"> <li>State the three phases of the acquisition process.</li> <li>Identify the functions and business issues associated with each phase.</li> <li>Describe the relationship between acquisition goals</li> </ul>



# LESSON PLAN

TIME	LESSON	and functions. <b>OBJECTIVES</b>
<b>Tuesday</b> 8:00 AM - 3:30 PM	<b>6. Presolicitation Phase</b>	<ul style="list-style-type: none"> <li>List and describe duties related to determining the need.</li> <li>List and describe duties related to initiating the procurement.</li> <li>List and describe duties related to analyzing the requirement.</li> <li>List and describe duties related to sourcing the requirement.</li> </ul>
<b>Wednesday</b> 8:00 AM- 3:30 PM	<b>7. Solicitation and Award Phase</b>	<ul style="list-style-type: none"> <li>List and describe duties related to soliciting offers.</li> <li>List and describe duties related to evaluating bids and proposals.</li> <li>List and describe duties related to awarding the contract.</li> </ul>
<b>Thursday</b> 8:00 AM- 11:30 AM  <i>Lunch</i>		
<b>Thursday</b> 12:30 PM - 3:30 PM  <b>Friday</b> 8:00 AM - 9:45 AM  <i>Break</i>	<b>8. Post Award Administration Phase</b>	<ul style="list-style-type: none"> <li>List and describe duties related to contract administration "start-up".</li> <li>List and describe duties related to assuring quality and resolving performance problems.</li> <li>List and describe duties related to payment and accounting.</li> <li>Define "closeout".</li> </ul>
<b>Friday</b> 10:05 AM - 11:30 AM  <i>Lunch</i>	<b>9. Modifications, Terminations, and Claims</b>	<ul style="list-style-type: none"> <li>List and describe duties related to contract modifications.</li> <li>List and describe duties related to termination.</li> <li>List specialized areas.</li> </ul>
<b>Friday</b> 12:30 PM - 1:30 PM	<b>10. Standards of Conduct</b>	<ul style="list-style-type: none"> <li>Identify standards of conduct that apply to the acquisition process.</li> <li>Recognize prohibited activities.</li> </ul>
<b>Friday</b> 1:30 PM	<b>Test</b>	<ul style="list-style-type: none"> <li>Identify the penalties for prohibited conduct.</li> </ul>



# INSTRUCTIONAL MATERIALS

## The Text/Reference

The Text/Reference consists of a Preface, ten chapters, and related appendices. It has been written both to:

- Support your attainment of the learning objectives of this course, and
- Serve as a desk/reference for your use back on the job.

<b>TEXT/REFERENCE</b>		
<b>READING ASSIGNMENTS</b>		
<b>When</b>	<b>Chapters</b>	<b>Sections</b>
Monday Night	Chapter 1 — pages 1-1 through 1-11	<i>Chapter Introduction</i> through §1.2.8 <i>[Tradeoffs] Between Quality and Cost</i>
	Chapter 3 — pages 3-2 through 3-10	<i>Chapter Introduction</i> through §3.1.4 <i>Common Law</i>
	Chapter 3 — pages 3-14 through 3-26	§3.2.2 <i>Basic Statutes</i> through §3.3.4 <i>Using the FAR System</i>
	Chapter 4 — pages 4-10 through 4-16	§4.2 <i>Key Acquisition Personnel</i>
	Chapter 5	All
	Chapter 6	All
Tuesday Night	Chapter 7	All
Wednesday Night	Chapter 8	All
Thursday Night	Chapter 9	All
	Chapter 10	All

## Classroom Materials

This volume includes case studies, roleplays, and information for other classroom exercises. During many of these exercises, you must “solve” a problem presented in the Classroom Materials by reading the corresponding pages in the Text/Reference. That is why the Classroom Materials are bound as a separate and independent volume.



# INSTRUCTIONAL APPROACH

**Instructional Methods** In this course, the Text/Reference has been designed to serve as your basic source of knowledge. To draw on this knowledge, you must read the Text/Reference. Your Instructor will not parrot the readings. Rather, your Instructor will use a variety of methods to supplement the readings and illustrate the main points. Methods include individual exercises, group exercises, roleplaying, in-class readings, and questions. On Tuesday through Friday, you will follow the story of a single requirement—upgrades to air pollution equipment in a Government building—from “cradle to grave”.

Do not expect that the Instructor's questions during the class will mirror the test questions. The test will question your knowledge of facts from the readings. During the class, your Instructor will typically ask you to express an opinion or your best judgement.

Do not expect all exercises to have a clear-cut School solution. Some case studies have no obvious solution. In such cases, the issue is not “right or wrong.” Rather, your goal is to identify the best course of action, given what facts you know at this time.

**Pace** Expect a fast pace. The emphasis in this course is on breadth of knowledge, not depth. Your Instructor has to cover 78 Contracting duties. Your Instructor won't spend much time on any one duty. Likewise, your Instructor will ask you to observe strict time limits (usually 15 to 20 minutes) to complete each classroom exercise.

**Questions** Because of the fast pace, your Instructor will sometimes ask you to hold a question for later in the course or for an after-hours dialogue with you. Time will simply not permit the Instructor to entertain questions before the whole class that are too technically involved.

**Test** There is one written test. It contains about 50 questions and will be administered on the last day of class. The test should take no more than 70 minutes. All test questions were developed to verify the learning acquired from course lesson learning objectives.

The answers to all test questions are taken from the reading assignments on the page I-4. Not all answers will be presented by the Instructor in classroom discussions.



# THE CURRICULUM

## Courses

Starting in FY91, the GSA Training Center is revising its Procurement Management Curriculum to comprehensively address the duties introduced in this course. Each new course will generally take the place of an existing course of the same title. The curriculum will include the courses below, listed in a recommended order of attendance.

1. Basic Procurement (Introduction to Contracting)
2. Procurement Planning
3. Small Purchases
4. Contracting By Sealed Bidding
5. Price Analysis
6. Contracting By Negotiation
7. Introductory Cost Analysis (formerly Cost and Price Analysis)
8. Government Contract Negotiation Techniques
9. Government Contract Administration
10. Types of Government Contracts
11. Government Contract Law
12. Source Evaluation Procedures for Federal Procurement
13. Advanced Procurement Management
14. Advanced Cost and Price Analysis
15. Advanced Contract Administration

## Specialized Courses

(in alphabetical order)

1. ADP Contracting
2. Contracting for Architect/Engineer Services
3. Construction Contracting



# THE CURRICULUM

## Characteristics

Following this course in Basic Procurement, each subsequent course in the curriculum will build your skill at performing the duties outlined in this course. In doing so, the new courses will have the following characteristics.

- Each course will build on the skills and knowledge taught in prior courses.
- Each course will cover specific duties and be designed to provide skill in performing those duties.
- There will generally be a separate lesson for each duty, with a corresponding chapter in the Text/Reference.
- The instructor will introduce the duty, its purpose (learning objective), applicable policies, and the standards for performing it.
- The instructor will walk you through a flowchart of the steps in performing the duty.
- You will perform selected steps in-class, using case studies and other such exercises.
- You will be tested.
- The Text/Reference will serve as an enduring on-the-job guide to the duties, with the flowcharts, steps in performance, and job aids.
- Practicums (i.e., self-instructional exercises) will be available to reinforce the in-class learning back on-the-job.
- Specialized courses will not reteach the basic acquisition process but will rather concentrate on the unique regulations and procedures for procuring ADP, A&E, or Construction.



## Introduction (Classroom Materials)



# CLASSROOM MATERIALS FOR PREFACE

## THE FEDERAL ACQUISITION PROCESS

### **Lesson Learning Objective**

At the completion of this lesson, you will be able to:

- Identify the basic components of the Federal acquisition process.
- Define significant terms used in Federal contracting.
- List and describe the essential elements of a contract.
- Describe how a contract is discharged.

### **Estimated Time**

One Hour.

### **Method of Instruction**

Lecture, questions/ answers, and a case study.

### **Student Materials**

Text/Reference--Preface

Preface classroom materials



**PREFACE CASE STUDY**  
**TODD'S CONTRACT WITH XYG**

Jerome Pasintach, President  
XYG Ferroplastics  
4040 Wyoming Ave  
St. Paul, Colorado 77777

Dear Mr. Pasintach,

In your advertisement on page 21 in the June, 1989, issue of Ferroplastics News, you announced your plans to shortly introduce several new models of ferroplastic fasteners. Your advertisement invited interested parties to call for pricing information and availability.

We have a dire need for the very best fasteners that you intend to produce. Therefore, pursuant to your advertisement, please ship 45,000 of your best ferroplastic fasteners to my Indianapolis plant (address enclosed) as soon as they are available. However, the fasteners must not be shipped in cartons, as implied in the enclosure. Instead, please individually package the fasteners in styrofoam.

I understand that your corporation is under court order to cease and desist from selling ferroplastic fasteners, because they are insulated in wrappings of friable asbestos. Our need for the fasteners outweighs such legal technicalities. I extend to you my full support and cooperation in resisting any legal challenges to your immediate production of fasteners for our purposes.

Yours,

J.P. Todd, Branch Chief  
Integration Division  
Industrial Management Bureau  
U.S. Department of Commerce

- QUESTIONS:**
- 1. If XYG fails to deliver the 45,000 ferroplastic fasteners, will XYG be in breach of contract? Why or why not?**
  - 2. What, if anything, is missing in this document that prevents it from being a contract?**



# **CLASSROOM MATERIALS FOR LESSON 1**

## **GOALS OF THE FEDERAL ACQUISITION PROCESS**

**Lesson Learning  
Objective**

At the completion of this lesson, you will be able to identify and define the goals of the Federal acquisition process.

**Estimated Time**

80 minutes.

**Method of Instruction**

Lecture, questions/ answers, and a case study.

**Student Materials**

Text/Reference----Chapter 1.

Lesson 1 classroom materials



## CASE STUDY

### THE OPTIMAL CONTRACT

Mark Brown is a project engineer at the Government's Knipling Research Center. He will be running tests on a newly developed "chip" material on or after July 1, 1995, and wants to make sure that his lab is properly equipped to perform the tests.

After a careful inventory of equipment in his lab, he finds that he will need to acquire a very high-temperature heat chamber. To properly conduct the tests, the heat chamber must meet the following design parameters:

1. Sustain a minimum temperature of 8,000 degrees Fahrenheit to a maximum of 10,000.
2. Have interior dimension of six cubic feet.
3. Be powered by natural gas rather than electricity.

The KRC has a natural gas line, but the KRC building does not presently have the electrical capacity for an electric unit. It would cost a minimum of \$145,000 to repair that deficiency, and take upwards of six months for the electrical work.

Mark prepared a Purchase Request (PR) and hand-carried it the Contracting Officer, Leslie Clark, on January 3, 1994. She determined that natural gas heat chambers are commercially available from six small business concerns at market prices that range from \$525,000 to \$600,000. Hence, she began preparing a Request for Proposals (RFP) to solicit offers, with delivery to be made on or before May 30. She also planned to limit competition to small businesses through a "total small business set-aside".

The next day, she was invited to lunch by Arch Less, the head of Kress Kilns. Arch then made the following offer:

"I have heard, through the grapevine, that you are about to release an RFP for a heat chamber. I have a proposition for you."

"Kress Kilns, for some time, has been making electric kilns for potters. Right now, the largest kiln we make has an interior space of two cubic feet and heats up to 1,000 degrees. But I am anxious to build bigger and better units. So here's the deal. I'll send you a proposal, but I'll leave the price blank. When you open the proposals, identify the lowest price submitted by one of my rivals. Then fill in the blank in my proposal by an amount that is, oh, \$10,000 less. I might lose my shirt on the deal, but I have money to lose and a strong desire to learn how to build higher capacity heat chambers."

"Do this for me, and I'll give you a nice position with our company after you retire next year. And, think of it this way, the contract would be optimal for all concerned. You win, because you'll have a good income to supplement your retirement pay. I win, because even if I lose money on this deal, I'll have an opportunity to learn how to build higher capacity heat units. And the taxpayer wins, because the Government will pay a price that is \$10,000 less than any other submitted offer."



“By the way, make sure that you delete the requirement for natural gas, because I don't know natural gas, and I want to stay all electric. Also, you know that I am the largest manufacturer of pottery kilns in the nation. I can't qualify for a small business set aside. Finally, 8,000 degrees is a bit much. Brown can't possibly need that much heat. Let the spec be 7,800 degrees. And I know the market well enough to tell you that the 200 degrees will save the taxpayer as much as \$5,000 in the purchase price of the unit.”

“If you don't go along with my offer, bear in mind that I have powerful political connections.”

**INSTRUCTIONS:**     **Read Chapter 1. On a sheet of blank paper write the seven goals of the acquisition process and answer the following questions.**

**QUESTIONS:**

- 1. Is Arch Less right? Would this deal be the best for all concerned?**
- 2. How does Arch Less's proposed deal rack up against these goals? For each goal on your list, write your evaluation of the Arch Less deal against that goal.**

**Goal 1—Quality**

**Goal 2—Timeliness**

**Goal 3—Cost**



## Goals of the Federal Acquisition Process (Classroom Materials)

**Goal 4—Minimizing Business and Technical Risks**

**Goal 5—Socioeconomic Objectives**

**Goal 6— Maximizing Competition**

**Goal 7—Maintaining Integrity**



# CLASSROOM MATERIALS FOR

## LESSON 2

### ORGANIZATIONAL ROLES AND RESPONSIBILITIES

**Lesson Learning  
Objective**

At the completion of this lesson, you will be able to:

- State the roles of the legislative, executive, and judicial branches relative to the acquisition process.
- State the role of the public and non-Government organizations in the acquisition process.

**Estimated Time**

**Optional.**

**Method of Instruction**

Lecture, questions/ answers, and a case study.

**Student Materials**

Text/Reference----Chapter 2.

Lesson 2 classroom materials



## **CASE STUDY**

### **NEW LAW FOR ANIMAL RIGHTS**

Congress passed a law in January that prohibits Government contractors from using animals for testing related to research on biological warfare programs and makes it a crime to violate the law. The law is to be implemented by including a special clause in contracts awarded for new procurement beginning 1 April. The President signed the bill.

In May, a contract with Test-A-Germ Corporation for biological warfare research was modified by supplemental agreement to provide additional funds to continue the research work. A Contracting Officer (CO) of the agency included the new clause with the modification. Test-A-Germ, which had been using animals in conjunction with the contract, refused to accept the clause because they believed research already underway would be affected.

The CO stated that the clause was mandatory because the additional funds were for more research than originally anticipated. Test-A-Germ claimed it was really a cost overrun.

Test-A-Germ submitted a claim to the CO, and the CO made a final decision that the clause has to be included. Test-A-Germ decided to file a dispute with the Board of Contract Appeals (BCA).

### **QUESTIONS:**

- 1. What Executive Branch organizations oversee the incorporation of law into the Federal Acquisition Regulation?**
- 2. What Branch of Government is the BCA a part of?**
- 3. If the BCA finds for one of the parties, to whom could the other party appeal the BCA decision?**
- 4. Had the CO ignored the law and continued to let Test-A-Germ experiment with animals, what organizations in the Legislative Branch would have been the most likely to discover the CO's misdeed?**
- 5. Which agency head would be responsible for prosecuting Test-A-Germ for violating the law?**
- 6. If you were the President of Test-A-Germ, what could you do to protest this law?**



# CLASSROOM MATERIALS FOR LESSON 3

## BASIC STATUTES AND REGULATIONS

**Lesson Learning  
Objective**

At the completion of this lesson, you will be able to:

- Identify and describe the four principal sources of Federal Contract Law.
- Identify the basic statutes that control the fundamentals of purchasing and contracting.
- Describe the Federal Acquisition Regulatory system—its sources, maintenance, supplements, and usage.

**Estimated Time**

One hour.

**Method of Instruction**

Lecture, questions/ answers, and a group exercise.

**Student Materials**

Text/Reference----Chapter 3.

Lesson 3 classroom materials



**WORKSHEET**  
**FAR RESEARCH**

Given Parts 5-6 of the FAR, reference and answer the following:

Note: Items 2 and 5 require only a reference

1. What is the response time for receipt of bids/proposals from the date of issuance in the solicitation?
2. What statutes require use of the CBD?
3. Where in Part 5 can you find guidance on releasing information?
4. Who has the authority to approve advertising in newspapers?
5. Where would you find the definition for full and open competition?
6. How many circumstances are there for contracting without full and open competition?



**PART 5 (as of FAC 90-11)**  
**PUBLICIZING CONTRACT ACTIONS**

**5.000 Scope of part.**

This part prescribes policies and procedures for publicizing contract opportunities and award information.

**5.001 Definition.**

“Contracting action,” as used in this part, means an action resulting in a contract, as defined in Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

**5.002 Policy.**

Contracting officers shall publicize contract actions in order to—

- (a) Increase competition;
- (b) Broaden industry participation in meeting Government requirements; and
- (c) Assist small business concerns, small disadvantaged business concerns, and labor surplus area concerns in obtaining contracts and subcontracts.

**SUBPART 5.1—DISSEMINATION OF INFORMATION**

**5.101 Methods of disseminating information.**

The Commerce Business Daily (CBD) is the public notification media by which U.S. Government agencies identify proposed contract actions and contract awards. The CBD is published in five or six daily editions weekly, as necessary.

(a) As required by the Small Business Act (15 U.S.C. 637(e)) and the Office of Federal Procurement Policy Act (41 U.S.C. 416), contracting officers shall disseminate information on proposed contract actions as follows:

(1) For contract actions expected to exceed the small purchase limitation in 13.000, by synopsisizing in the Commerce Business Daily (CBD) (see section 5.201); and<sup>1</sup>

(2) For proposed contract actions expected to exceed \$10,000 (\$5,000 for Defense activities), but not expected to exceed \$25,000, by displaying in a public place at the contracting office issuing the solicitation, an unclassified notice of the solicitation or a copy of the solicitation satisfying the requirements of 5.207(c) and (f). Such information shall be posted not later than the date the solicitation is issued and remain posted for at least 10 days regardless of the date of award. Such information shall remain posted until after offers have been opened.

(i) If solicitations are posted in lieu of a notice, various methods of satisfying the requirements of 5.207(c) and (f) may be employed. For example, the requirements for 5.207(c) and (f) may be met by stamping the solicitation, by a cover sheet to the solicitation, or by placing a general statement in the display room.

(ii) The contracting officer need not comply with the display requirements set forth above when the exemptions at 5.202(a)(1), (5) through (9), or (11) apply, or when oral solicitations are used.

(iii) Contracting officers shall post solicitations expected to exceed \$25,000 if required by agency regulations.

(b) In addition, one or more of the following methods may be used:

- (1) Preparing periodic handouts listing proposed contracts, and displaying them as in 5.101(a)(2).
- (2) Assisting local trade associations in disseminating information to their members.
- (3) Making brief announcements of proposed contracts to newspapers, trade journals, magazines, or other mass communication media for publication without cost to the Government.
- (4) Placing paid advertisements in newspapers or other communications media, subject to the following limitations:
  - (i) Contracting officers shall place paid advertisements of proposed contracts only when it is anticipated that effective competition cannot be obtained otherwise (see 5.205(d)).

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<sup>1</sup>FAC 90-7



(ii) Contracting officers shall not place advertisements of proposed contracts in a newspaper published and printed in District of Columbia unless the supplies or services will be furnished, or the labor performed, in the District of Columbia or adjoining counties in Maryland or Virginia (44 U.S.C. 3701).

(iii) Advertisements published in newspapers must be under proper written authority in accordance with 44 U.S.C. 3702 (see 5.502(a)).

#### **5.102 Availability of solicitations.**

(a) The contracting officer shall—

(1) Maintain a reasonable number of copies of solicitations publicized in the CBD, including specifications and other pertinent information (upon request, potential sources not initially solicited shall be mailed or provided copies of solicitations, if available);

(2) Provide copies of a limited solicitation to firms requesting copies that were not initially solicited, but only after advising the requester of the determination to limit the solicitation to a specified firm or firms as authorized under Part 6;

(3) Provide copies on a “first-come-first-served” basis, for pickup at the contracting office, to publishers, trade associations, information services, and other members of the public having a legitimate interest (for construction, see 36.211); and

(4) In addition to the methods of disseminating proposed contract information in 5.101(a) and (b), provide, upon request to small business concerns, as required by 15 U.S.C. 637(b)—

(i) A copy of the solicitation and specifications;

(ii) The name and telephone number of an employee of the contracting office to answer questions on the solicitation; and

(iii) Adequate citations to each applicable major Federal law or agency rule with which small business concerns must comply in performing the contract;

(5) Retain a copy of the solicitation and other documents for review by and duplication for those requesting copies after the initial number of copies is exhausted.

(6) Agencies may require payment of a fee, not exceeding the actual cost of duplication, for a copy of the solicitation documents.

(b) This section 5.102 applies to classified contracts to the extent consistent with agency security requirements (see 5.202(a)(1)).

### **SUBPART 5.2—SYNOPSIS OF PROPOSED CONTRACT ACTIONS**

#### **5.201 General.**

(a) As required by the Small Business Act (15 U.S.C. 637(c)) and the Office of Federal Procurement Policy Act (41 U.S.C. 416), agencies shall furnish for publication in the Commerce Business Daily (CBD) notices of proposed contract actions as specified below.

(b) For acquisitions of supplies and services other than those covered by the exceptions in 5.202, and special situations in 5.205, the contracting officer shall transmit a notice to the CBD (synopsis) (see 5.207) for each proposed—

(1) Contract actions meeting the thresholds in 5.101(a)(1);

(2) Effort to locate private commercial sources for cost comparison purposes under OMB Circular A-76 (see 5.205(d));

(3) Modification to an existing contract for additional supplies or services that meets the thresholds in 5.101(a)(1); or

(4) Contract action in any amount when advantageous to the Government.

(c) The primary purposes of the CBD notice are to improve small business access to acquisition information and enhance competition by identifying contracting and subcontracting opportunities.

(d) Subscriptions to the CBD must be placed with the Superintendent of Documents, Government Printing Office, Washington, DC 20402 (Tel. 202-783-3238).



### **5.202 Exceptions.**

The contracting officer need not submit the notice required by 5.201 when—

(a) The contracting officer determines that—

(1) The synopsis cannot be worded to preclude disclosure of an agency's needs and such disclosure would compromise the national security (e.g., would result in disclosure of classified information). The fact that a proposed solicitation or contract action contains classified information, or that access to classified matter may be necessary to submit a proposal or perform the contract does not, in itself, justify use of this exception to synopsis;

(2) The contract action is made under the conditions described in 6.302-2 and the Government would be seriously injured if the agency complies with the time periods specified in 5.203;

(3) The contract action is one for which either the written direction of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government, or the terms of an international agreement or treaty between the United States and a foreign government, or international organizations, has the effect of requiring that the acquisition shall be from specified sources;

(4) The contract action is expressly authorized or required by a statute to be made through another Government agency, including acquisitions from the Small Business Administration (SBA) using the authority of section 8(a) of the Small Business Act (but see 5.205(f)), or from a specific source such as a workshop for the blind under the rules of the Committee for the Purchase from the Blind and Other Severely Handicapped;<sup>2</sup>

(5) The contract action is for utility services other than telecommunications services and only one source is available;

(6) The contract action is an order placed under a requirements contract;

(7) The contract action results from acceptance of a proposal under the Small Business Innovation Development Act of 1982 (Pub. L. 97-219);

(8) The contract action results from the acceptance of an unsolicited research proposal that demonstrates a unique and innovative concept (see 6.003) and publication of any notice complying with 5.207 would improperly disclose the originality of thought or innovativeness of the proposed research, or would disclose proprietary information associated with the proposal. This exception does not apply if the contract action results from an unsolicited research proposal and acceptance is based solely upon the unique capability of the source to perform the particular research services proposed (see 6.302-1(a)(2)(i));

(9) The contract action is made for perishable subsistence supplies, and advance notice is not appropriate or reasonable;

(10) The contract action is made under conditions described in 6.302-3, or 6.302-5 with regard to brand name commercial items for authorized resale, or 6.302-7, and advance notice is not appropriate or reasonable;

(11) The contract action is made under the terms of an existing contract that was previously synopsized in sufficient detail to comply with the requirements of 5.207 with respect to the current contract action; or

(12) The contract action is by a Defense agency and the contract action will be made and performed outside the United States, its possessions, or Puerto Rico, and only local sources will be solicited. This exception does not apply to contract actions subject to the Trade Agreements Act (see subpart 25.4).

(b) The head of the agency determines in writing, after consultation with the Administrator for Federal Procurement Policy and the Administrator of the Small Business Administration, that advance notice is not appropriate or reasonable.

### **5.203 Publicizing and response time.**

Whenever agencies are required to publish notice of contract actions under 5.201, they shall proceed as follows:

(a) A notice of the contract action shall be published in the CBD at least 15 days before issuance of a solicitation.

(b) Agencies shall allow at least 30 days response time for receipt of bids or proposals from the date of issuance of a solicitation.

(c) Agencies shall allow at least 30 days response time from the date of publication of a proper notice of intent to contract for architect-engineer services or before issuance of an order under a basic ordering agreement or similar arrangement.

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<sup>2</sup>FAC 90-7



(d) Agencies shall allow at least 45 days response time for receipt of bids or proposals from the date of publication of the notice required in 5.201 for contract actions categorized as research and development.

(e) Nothing in this subpart prohibits officers or employees of agencies from responding to requests for information.

(f) Contracting officers may, unless they have evidence to the contrary, presume that notice has been published 10 days (6 days if electronically transmitted) following transmittal of the synopsis to the CBD. This presumption is based on the CBD's confirmation that publication does occur within these time frames. This presumption does not negate the mandatory waiting or response times specified in paragraphs (a) through (d) of this section. Upon learning that a particular notice has not in fact been published within the presumed timeframes, contracting officers should consider whether the date for receipt of offers can be extended or whether circumstances have become sufficiently compelling to justify proceeding with the contract action under the authority of 5.202(a)(2).

#### **5.204 Presolicitation notices.**

Contracting officers shall publicize presolicitation notices in the CBD (see 15.404 and 36.302). Synopsizing is still required prior to issuance of any resulting solicitation (see 5.201 and 5.203).

#### **5.205 Special situations.**

\* \* \* \* \*

#### **5.206 Publicizing subcontract opportunities.**

Prime contractors may use the CBD to publicize subcontracting opportunities stemming from receipt of a Government contract. The CBD can be used to seek competition for subcontracts, to increase participation by small, small disadvantaged, and women-owned business firms, and to meet subcontracting plan goals. Synopses of subcontract opportunities should be prepared and submitted in accordance with 5.207.

#### **5.207 Preparation and transmittal of synopses.**

(a) *Transmittal.* Contracting officers shall transmit synopses of actions identified under 5.101 to the Commerce Business Daily by the most expeditious and reliable means available.

(1) *Electronic transmission.* All synopses transmitted by electronic means shall be in ASCII Code. Contact your agency's communications center for the appropriate transmission instructions or services.

(2) *Hard copy transmission.* When electronic transmission is not feasible, synopses should be sent to the CBD via mail or other physical delivery of hard copy and should be addressed to:

U.S. Department of Commerce  
Commerce Business Daily  
P.O. Box 5999  
Chicago, IL 60680

(b) *Format.* The contracting officer shall prepare the synopsis in the following style and format to assure timely processing of the synopsis by the Commerce Business Daily.

(1) *General.* Format for all synopses shall employ conventional typing with abbreviations, capitalization, and punctuation all grammatically correct. Each synopsis shall include all 17 format items. Do not include the title for the format item.

(2) *Spacing.* Begin each line flush left and use double spaced lines between each format item. If more than one synopsis is to be sent at one time, separate each synopsis with four line spaces and begin each synopsis with format item number 1.

(3) *Abbreviations.* Minimize abbreviations or acronyms to commonly recognized abbreviations.

(4) *Standard format.* Prepare each synopsis in the following format. Begin each format item with the number of the item followed by a period (e.g., 1.). Then make two spaces after the period. Next, type the appropriate information for each format. Then conclude each format item with two exclamation points (i.e., !!). Conclude each complete synopsis, following format item 17, with five asterisks (i.e., \*\*\*\*\*).



**FORMAT ITEM AND EXPLANATION/  
DESCRIPTION OF ENTRY**

1. **ACTION CODE.** (A single alphabetic character denoting the specific action related in the synopsis. Choices are limited to the following: P=Presolicitation Notice/Procurement; A=Award announcement; M=Modification of a previously announced procurement action (a correction to a previous CBD announcement); R=Sources Sought (includes A-76 services and architect-engineer contracts). If none of the standard codes apply, enter "N/A".)

2. **DATE.** (Date on which the synopsis is transmitted to the CBD for publication. Use a four digit number indicating month in two digits and date in two digits (MMDD). All four spaces must be used with preceding 0 for months January thru September. Format: 0225 for February 25.)

3. **YEAR.** (Two numeric digits denoting the calendar year of the synopsis. Format 85: for 1985.)

4. **FEDERAL INFORMATION PROCESSING STANDARD (FIPS) NUMBER.** (Agency code number identifying the sending agency. Normally a four or five character field. Usually numeric, but may contain one or more alphabetic characters. Reference is FIPS 95 publication by the National Bureau of Standards which identifies Federal Agencies and related organizations.)

5. **CONTRACTING OFFICE ZIP CODE.** (The geographic zip code for the contracting office. Up to nine characters may be entered. When using a nine digit zip code, separate the first five digits and the last four digits with a dash. Format: 00000-0000.)

6. **CLASSIFICATION CODE.** (Service or supply code number; see 5.207(g). Each synopsis shall classify the contemplated contract action under the one classification code which most closely describes the acquisition. If the action is for a multiplicity of goods and/or services, the preparer should select the one category best describing the overall acquisition based upon value. Inclusion of more than one classification code, or failure to include a classification code, will result in rejection of the synopsis by the Commerce Business Daily.)

7. **CONTRACTING OFFICE ADDRESS.** (The complete name and address of the contracting office. Field length is open, but generally not expected to exceed 90 alpha-numeric characters.)

8. **SUBJECT.** (Insert classification code for ITEM 6, and a brief title description of services, supplies, or project required by the agency. This will appear in the CBD as the bold faced title in the first line of the description.) (200 character spaces available.)<sup>3</sup>

9. **PROPOSED SOLICITATION NUMBER.** (Agency number for control, tracking, identification. For solicitations; if not a solicitation, enter N/A.)

10. **OPENING/CLOSING RESPONSE DATE.** (For solicitations; if not a solicitation, enter N/A. Issuing agency deadline for receipt of bids, proposals or responses. Use a six digit date. Format: MMDDYY. Explanation may appear in text of synopsis in Item 17.)

11. **CONTACT POINT/CONTRACTING OFFICER.** (Include name and telephone number of contact. Also include name and telephone number of contracting officer if different. This will appear as the first item of information in the published entry. This entry may be alpha-numeric and up to 320 character blocks in length.)

12. **CONTRACT AWARD AND SOLICITATION NUMBER.** (For awards; if not an award, enter N/A. The award, solicitation or project reference number assigned by the agency to provide a reference for bidders/subcontractors. Two hundred character spaces available for alpha-numeric entries.)

13. **CONTRACT AWARD DOLLAR AMOUNT.** (For awards; if not an award, enter N/A. A ten digit numeric field. Enter whole dollars only. Output will be preceded by a dollar sign (\$).)

14. **CONTRACT LINE ITEM NUMBER.** (For awards as desired; if not an award, enter N/A. The alpha-numeric field with dashes and slashes may not exceed 32 spaces. If sufficient space is not available, enter N/A and insert the contract line item number(s) in format item 17.)

15. **CONTRACT AWARD DATE.** (For awards; if not an award, enter N/A. A six digit entry showing the date the award is made or the contract let. Format: MMDDYY.)

16. **CONTRACTOR.** (For awards; if not an award, enter N/A. Name and address of successful offeror. Four hundred character spaces allowed for full identification.)

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17. **DESCRIPTION.** (Enter a clear and concise description of the action. The description may not exceed 12,000 textual characters (approximately 3-1/2 single spaced pages). The suggested sequence of the content and items for inclusion in the description are contained in 5.207(c). Insert N/A when synopsisizing awards.)<sup>4</sup>

(5) *Nonapplicable format items.* When a format item is not applicable, type the item number, a period, two blank spaces, and "NA" (e.g., 10. N/A!!).

(6) The following is a sample CBD synopsis:

1. P!!
2. 0925!!
3. 85!!
4. 57936!!
5. 19111-5096!!
6. 95!!
7. Defense Industrial Supply Center, 700 Robbins Ave., Philadelphia, PA 19111-5096!!
8. 95—Steel Plate!!
9. DLA500-86-B-0090!!
10. 111585!!
11. Contact Mary Drake, 215/697-XXXX/Contracting Officer, Larry Bird, 215/697-XXXX!!
12. N/A!!
13. N/A!!
14. N/A!!
15. N/A!!
16. N/A!!
17. NSN9515-00-237-5342, Spec Mil-S-226988, 0.1875 inch thick, 96 inch width. 240 inch length. Carbon steel, 45,000 lbs. Delivery to NSY Philadelphia, PA, and NSC Norfolk, VA. Delivery by 1 Oct 86. When calling, be prepared to state name, address, and solicitation number. See note 9. All responsible sources may submit an offer which will be considered. \*\*\*\*\*

(c) *General format for Item 17, "Description."* (1) Prepare a clear and concise description of the supplies or services that is not unnecessarily restrictive of competition and will allow a prospective offeror to make an informed business judgment as to whether a copy of the solicitation should be requested.

(2) Do not include in Item 17 the CBD supply or service classification code from Item 6.

(i) National Stock Number (NSN) if assigned.

(ii) Specification and whether an offeror, its product, or service must meet a qualification requirement in order to be eligible for award, and identification of the office from which additional information about the qualification requirement may be obtained (see Subpart 9.2).

(iii) Manufacturer, including part number, drawing number, etc.

(iv) Size, dimensions, or other form, fit or functional description.

(v) Predominant material of manufacture.

(vi) Quantity, including any options for additional quantities.

(vii) Unit of issue.

(viii) Destination information.

(ix) Delivery schedule.

(x) Duration of the contract period.

(xi) For Architect-Engineer projects and other projects for which the supply or service codes are insufficient, provide brief details with respect to: location, scope of services required, cost range and limitations, type of contract, estimated starting and completion dates, and any significant evaluation factors.

(xii) Numbered notes (see 5.207(e)), including instructions for set-asides for small businesses and labor surplus area concerns.

(xiii) In the case of contract actions under Subpart 6.3, insert a statement of the reason justifying other than full and open competition, and identify the intended source(s) (see 5.207(e)(3)).

(xiv) Insert a statement that all responsible sources may submit a bid, proposal, or quotation which shall be considered by the agency.

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- (xv) If the contracting office will accept requests for solicitations through alternate means (e.g., facsimile machine, Telex), provide the machine number and routing instructions.
- (d) *Set-asides*. When the proposed acquisition provides for a total or partial small business or labor surplus area (LSA) set aside, the appropriate CBD Numbered Note will be cited.

(e) *Numbered Notes*.

(1) Numbered Notes are footnotes. The purpose of the Numbered Notes is to conserve space and simplify the identification of repetitive notices. An explanation of the Numbered Notes appears each week in the Monday edition of the CBD. If the Monday edition of the CBD is not printed because of a holiday, an explanation of the Numbered Notes will appear in the next day's issue. When one or more of the Notes applies to a synopsis, contracting officers should reference the note at the end of Item 17 of the synopsis; e.g., "See Note(s)....." Requests to add or change Notes will be submitted through channels for approval by the DAR Council and the CAA Council. The Councils will review the Numbered Notes periodically and, as appropriate, after consultation with the initiating agency, advise the Department of Commerce to delete or modify outdated or unused notes from the CBD. Contracting officers shall also include the substance of Numbered Notes whenever a proposed contract is publicized by means other than the CBD (see 5.101).

(2) If the acquisition is subject to the requirements of the Trade Agreements Act of 1979 (see Part 25), Numbered Note 12 shall be referenced in the synopsis.

(3) If the synopsis is for a proposed contract action intended to be awarded on a sole source basis, the synopsis shall refer to Numbered Note 22. If it is anticipated that award will be made via a delivery order to an existing basic ordering agreement, the synopsis shall so state.

(f) *Information not covered by Numbered Notes*. To alert prospective contractors to information not covered by Numbered Notes, contracting officers should identify the following unusual circumstances in the synopsis:

(1) *"Availability of specifications, plans, drawings, or other technical data*. It is impracticable to distribute the applicable.....[insert 'specifications,' 'plans,' 'drawings,' or other appropriate words] with the solicitation. These contract documents may be examined or obtained at....."

(2) *"Availability of background research report*. This contract for basic research is a continuation of an effort conducted for the past.....  
[insert period]. A research report containing findings to date is not available to the Government."

(3) *"Production requirements*. The production of the supplies listed requires a substantial initial investment or an extended period of preparation for manufacture."

(4) *"Place of performance unknown*. This contract is subject to the Service Contract Act and the place of performance is unknown. Wage determinations have been requested for . . . . . (insert localities). The contracting officer will request wage determinations for additional localities if asked to do so in writing by . . . . . (insert time and date)."

(g) *Codes to be Used in Synopses to Identify Services or Supplies*.

(1) Contracting officers shall use one of the following classification codes when the contemplated contract action is for services or when the overall acquisition can best be described as services based upon value:

Code	Description
A	Research and development.
B	Special studies and analysis - not R&D.
C	Architect and engineering services.
D	Automatic data processing and telecommunication services.
E	Purchase of structures and facilities.
F	Natural resources and conservation services.
G	Social services.
H	Quality control, testing, and inspection services.
J	Maintenance, repair, and rebuilding of equipment.
K	Modification of equipment.
L	Technical representative services.
M	Operation of Government-owned facilities.
N	Installation of equipment.
P	Salvage services.



- Q Medical services.
- R Professional, administrative, and management support services.
- S Utilities and housekeeping services.
- T Photographic, mapping, printing, and publication services.
- U Education and training services.
- V Transportation, travel, and relocation services.
- W Lease or rental of equipment.
- X Lease or rental of facilities.
- Y Construction of structures and facilities.
- Z Maintenance, repair, and alteration of real property.

(2) Contracting officers shall use one of the following classification codes when the contemplated contract action is for supplies or when the overall acquisition can best be described as supplies based upon value:



<b>Code</b>	<b>Description</b>
10	Weapons.
11	Nuclear ordnance.
12	Fire control equipment.
13	Ammunition and explosives.
14	Guided missiles.
15	Aircraft and airframe structural components.
16	Aircraft components and accessories.
17	Aircraft launching, landing, and ground handling equipment.
18	Space vehicles.
19	Ships, small craft, pontoons, and floating docks.
20	Ship and marine equipment.
22	Railway equipment.
23	Ground effect vehicles, motor vehicles, trailers, and cycles.
24	Tractors.
25	Vehicular equipment components.
26	Tires and tubes.
28	Engines, turbines, and components.
29	Engine accessories.
30	Mechanical power transmission equipment.
31	Bearings.
32	Woodworking machinery and equipment.
34	Metalworking machinery.
35	Service and trade equipment.
36	Special industry machinery.
37	Agricultural machinery and equipment.
38	Construction, mining, excavating, and highway maintenance equipment.
39	Materials handling equipment.
40	Rope, cable, chain, and fittings.
41	Refrigeration, air-conditioning, and air circulating equipment.
42	Fire fighting, rescue, and safety equipment.
43	Pumps and compressors.
44	Furnace, steam plant, and drying equipment; and nuclear reactors.
45	Plumbing, heating, and sanitation equipment.
46	Water purification and sewage treatment equipment.
47	Pipe, tubing, hose, and fittings.
48	Valves.
49	Maintenance and repair shop equipment.
51	Hand tools.
52	Measuring tools.
53	Hardware and abrasives.
54	Prefabricated structures and scaffolding.
55	Lumber, millwork, plywood, and veneer.
56	Construction and building materials.
58	Communication, detection, and coherent radiation equipment.
59	Electrical and electronic equipment components.
60	Fiber optics materials, components, assemblies, and accessories.
61	Electric wire, and power and distribution equipment.
62	Lighting fixtures and lamps.
63	Alarm, signal, and security detection systems.
65	Medical, dental, and veterinary equipment and supplies.
66	Instruments and laboratory equipment.



<b>Code</b>	<b>Description</b>
67	Photographic equipment.
68	Chemicals and chemical products.
69	Training aids and devices.
70	General-purpose automated data processing equipment (including firmware), software, supplies, and support equipment.
71	Furniture.
72	Household and commercial furnishings and appliances.
73	Food preparation and serving equipment.
74	Office machines, text processing systems, and visible record equipment.
75	Office supplies and devices.
76	Books, maps, and other publications.
77	Musical instruments, phonographs, and home-type radios.
78	Recreational and athletic equipment.
79	Cleaning equipment and supplies.
80	Brushes, paints, sealers, and adhesives.
81	Containers, packaging, and packing supplies.
83	Textiles, leather, furs, apparel and shoe findings, tents, and flags.
84	Clothing, individual equipment, and insignia.
85	Toiletries.
87	Agricultural supplies.
88	Live animals.
89	Subsistence.
91	Fuels, lubricants, oils, and waxes.
93	Nonmetallic fabricated materials.
94	Nonmetallic crude materials.
95	Metal bars, sheets, and shapes.
96	Ores, minerals, and their primary products.
99	Miscellaneous.

(3) Only one classification code shall be reported. If more than one code is applicable, the contracting officer shall use the code which describes the predominant product or service being procured. The FPDS Product and Service Codes Manual, October 1988, may be used to identify a specific product or service within each code.

(h) *Cancellation of synopsis.* Contracting officers should not publish notices of solicitation cancellations (or indefinite suspensions) of contract actions in the CBD. Cancellations of solicitations shall be made in accordance with 14.209 and 14.404-1.

## **SUBPART 5.3—SYNOPSIS OF CONTRACT AWARDS**

### **5.301 General.**

(a) Except for contract actions described in paragraph (b) of this section, contracting officers shall synopsise in the Commerce Business Daily (CBD) awards exceeding \$25,000 that (1) are subject to the Trade Agreements Act (see 25.402 and 25.403), or (2) are likely to result in the award of any subcontracts. However, the dollar threshold is not a prohibition against publicizing an award of a smaller amount when publicizing would be advantageous to industry or to the Government.

(b) A notice is not required under paragraph (a) of this section if—

(1) The notice would disclose the executive agency's needs and the disclosure of such needs would compromise the national security;

(2) The award results from acceptance of an unsolicited research proposal that demonstrates a unique and innovative research concept and publication of any notice would disclose the originality of thought or innovativeness of the proposed research or would disclose proprietary information associated with the proposal;

(3) The award results from a proposal submitted under the Small Business Innovation Development Act of 1982 (Pub. L. 97-219);

(4) The contract action is an order placed under a requirements contract;

(5) The award is made for perishable subsistence supplies; or



- (6) The award is for utility services, other than telecommunications services, and only one source is available.
- (c) With respect to acquisitions subject to the Trade Agreements Act, contracting officers shall submit synopses in sufficient time to permit their publication in the CBD not later than 60 days after award.

#### **5.302 Preparation and transmittal of synopses of awards.**

Contracting officers shall transmit synopses of contract awards in the same manner as prescribed in 5.207.

#### **5.303 Announcement of contract awards.**

(a) *Public announcement.* Contracting officers shall make information available on awards over \$3 million (unless another dollar amount is specified in agency acquisition regulations) in sufficient time for the agency concerned to announce it by 5:00 p.m. Washington, DC time on the day of award. Contracts excluded from this reporting requirement include those placed with (1) the Small Business Administration under Section 8(a) of the Small Business Act, and (2) with foreign firms when the place of delivery or performance is outside the United States or its possessions. Agencies shall not release information on awards before the public release time of 5:00 p.m. Washington, DC time.<sup>5</sup>

(b) *Local announcement.* Agencies may also release information on contract awards to the local press or other media. When local announcements are made for contract awards in excess of the small purchase limitation in 13.000, they shall include—

(1) For awards after sealed bidding, a statement that the contract was awarded after competition by sealed bidding, the number of offers solicited and received, and the basis for selection (e.g., the lowest responsible bidder); or

(2) For awards after negotiation, the information prescribed by 15.1001(c), and after competitive negotiation (either price or design competition), a statement to this effect, and in general terms the basis for selection.

### **SUBPART 5.4—RELEASE OF INFORMATION**

#### **5.401 General.**

(a) A high level of business security must be maintained in order to preserve the integrity of the acquisition process. When it is necessary to obtain information from potential contractors and others outside the Government for use in preparing Government estimates, contracting officers shall ensure that the information is not publicized or discussed with potential contractors.

(b) Contracting officers may make available maximum information to the public, except information—

(1) On plans that would provide undue or discriminatory advantage to private or personal interests;

(2) Received in confidence from an offeror;

(3) Otherwise requiring protection under Freedom of Information Act (see Subpart 24.2) or Privacy Act (see Subpart 24.1); or

(4) Pertaining to internal agency communications (e.g., technical reviews, contracting authority or other reasons, or recommendations referring thereto).

(c) This policy applies to all Government personnel who participate directly or indirectly in any stage of the acquisition cycle.

#### **5.402 General public.**

Contracting officers shall process requests for specific information from the general public, including suppliers, in accordance with Subpart 24.1 or 24.2, as appropriate.

#### **5.403 Requests from Members of Congress.**

(a) *Individual requests.* Contracting officers shall give Members of Congress, upon their request, detailed information regarding any particular contract. When responsiveness would result in disclosure of classified matter, business confidential information, or information prejudicial to competitive acquisition, the contracting officer shall refer the proposed reply, with full documentation, to the agency head and inform the legislative liaison office of the action.

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(b) *Inclusion on solicitation mailing lists.* Upon request of a Congressional Committee or Subcommittee Chairperson, contracting officers shall place any member of a Committee or Subcommittee on the applicable solicitation mailing lists to receive automatic distribution of solicitations in the specific area of interest.

#### **5.404 Release of long-range acquisition estimates.**

To assist industry planning and to locate additional sources of supply, it may be desirable to publicize estimates of unclassified long-range acquisition requirements. Estimates may be publicized as far in advance as possible.

##### **5.404-1 Release procedures.**

(a) *Application.* The agency head, or a designee, may release long-range acquisition estimates if the information will—

- (1) Assist industry in its planning and facilitate meeting the acquisition requirements;
- (2) Not encourage undesirable practices (e.g., attempts to corner the market or hoard industrial materials); and
- (3) Not indicate the existing or potential mobilization of the industry as a whole.

(b) *Conditions.* The agency head shall ensure that—

(1) Classified information is released through existing security channels in accordance with agency security regulations;

(2) The information is publicized as widely as practicable to all parties simultaneously by any of the means described in this part;

(3) Each release states that (i) the estimate is based on the best information available, (ii) the information is subject to modification and is in no way binding on the Government, and (iii) more specific information relating to any individual item or class of items will not be furnished until the proposed acquisition is synopsisized in the CBD, or the solicitation is issued;

(4) Each release contains the name and address of the contracting officer that will process the acquisition;

(5) Modifications to the original release are publicized as soon as possible, in the same manner as the original; and

(6) Each release—

(i) Is coordinated in advance with small business, public information, and public relations personnel, as appropriate;

(ii) Contains, if applicable, a statement that small business or LSA set-asides may be involved, but that a determination can be made only when acquisition action is initiated; and

(iii) Contains the name or description of the item, and the estimated quantity to be acquired by calendar quarter, fiscal year, or other period. It may also contain such additional information as the number of units last acquired, the unit price, and the name of the last supplier.

##### **5.404-2 Announcements of long-range acquisition estimates.**

Further publication, consistent with the needs of the individual case, may be accomplished by announcing in the CBD that long-range acquisition estimates have been published and are obtainable, upon request, from the contracting officer.

#### **5.405 Exchange of acquisition information.**

(a) When the same item or class of items is being acquired by more than one agency, or by more than one contracting activity within an agency, the exchange and coordination of pertinent information, particularly cost and pricing data, between these agencies or contracting activities is necessary to promote uniformity of treatment of major issues and the resolution of particularly difficult or controversial issues. The exchange and coordination of information is particularly beneficial during the period of acquisition planning, presolicitation, evaluation, and pre-award survey.

(b) When substantial acquisitions of major items are involved or when the contracting activity deems it desirable, the contracting activity shall request appropriate information (on both the end item and on major subcontracted components) from other agencies or contracting activities responsible for acquiring similar items. Each agency or contracting activity receiving such a request shall furnish the information requested. The contracting officer, early in a negotiation of a contract, or in connection with the review of a subcontract, shall request the contractor to furnish information as to the contractor's or subcontractor's previous Government contracts and subcontracts for the same or similar end items and major subcontractor components.



## SUBPART 5.5—PAID ADVERTISEMENTS

### 5.501 Definitions.

“Advertisement,” as used in this subpart, means any single message prepared for placement in communication media, regardless of the number of placements.

“Publication,” as used in this subpart, means (a) the placement of an advertisement in a newspaper, magazine, trade or professional journal, or any other printed medium, or (b) the broadcasting of an advertisement over radio or television.

### 5.502 Authority.

(a) *Newspapers.* Authority to approve the publication of paid advertisements in newspapers is vested in the head of each agency (44 U.S.C. 3702). This approval authority may be delegated (5 U.S.C. 302 (b)). Contracting officers shall obtain written authorization in accordance with policy procedures before advertising in newspapers.

(b) *Other media.* Unless the agency head determines otherwise, advance written authorization is not required to place advertisements in media other than newspapers.

### 5.503 Procedures.

(a) *General.* Orders for paid advertisements may be placed directly with the media or through an advertising agency. Contracting officers shall give small and disadvantaged business concerns maximum opportunity to participate in these acquisitions.

(b) *Rates.* Advertisements may be paid for at rates not over the commercial rates charged private individuals, with the usual discounts (44 U.S.C. 3703).

(c) *Forms.* (1) When contracting directly with the media for advertising, contracting officers shall—

(i) Use Standard Form 26, Award/Contract, or Standard Form 1447, Solicitation/Contract, when the dollar amount of the acquisition exceeds the small purchase dollar limitations (see 13.000); or

(ii) Use Optional Form 347, Order for Supplies or Services, or an approved agency form, when the dollar amount of the acquisition does not exceed the small purchase dollar limitations (see 13.000).

(2) When issuing a delivery order under a basic ordering agreement with an advertising agency for advertising, contracting officers should use Optional Form 347, or an approved agency form.

(d) *Proof of advertising.* Every invoice for advertising shall be accompanied by a copy of the advertisement or an affidavit of publication furnished by the publisher, radio or television station, or advertising agency concerned (44 U.S.C. 3703). Paying offices shall retain the proof of advertising until the General Accounting Office settles the paying office's account.

(e) *Payment.* Upon receipt of an invoice supported by proof of advertising, the contracting officer shall attach a copy of the written authority (see 5.502(a)) and submit the invoice for payment under agency procedures.

### 5.504 Use of advertising agencies.

(a) *General.* Basic ordering agreements may be placed with advertising agencies for assistance in producing and placing advertisements when a significant number will be placed in several publications and in national media. Services of advertising agencies include, but are not limited to, counseling as to selection of the media for placement of the advertisement, contacting the media in the interest of the Government, placing orders, selecting and ordering typography, copywriting, and preparing rough layouts.

(b) *Use of commission-paying media.* The services of advertising agencies in placing advertising with media often can be obtained at no cost to the Government, over and above the space cost, as many media give advertising agencies a commission or discount on the space cost that is not given to the Government.

(c) *Use of noncommission-paying media.* Some media do not grant advertising agencies a commission or discount, meaning the Government can obtain the same rate as the advertising agency. If the advertising agency agrees to place advertisements in noncommission-paying media as a no-cost service, the basic ordering agreement shall so provide. If the advertising agency will not agree to place advertisements at no cost, the agreement shall (1) provide that the Government may place orders directly with the media, or (2) specify an amount that the Government will pay if the agency places the orders.

(d) *Art work, supplies, and incidentals.* The basic ordering agreement also may provide for the furnishing by the advertising agency of art work, supplies, and incidentals, including brochures and pamphlets, but not their printing. “Incidentals” may include telephone calls, telegrams, and postage incurred by the advertising agency on behalf of the Government.



## **PART 6 (as of FAC 90-11)**

### **COMPETITION REQUIREMENTS**

#### **6.000 Scope of part.**

This part prescribes policies and procedures to promote full and open competition in the acquisition process and to provide for full and open competition, full and open competition after exclusion of sources, other than full and open competition, and competition advocates. As used in this part, full and open competition is the process by which all responsible offerors are allowed to compete. This part does not deal with the results of competition (e.g., adequate price competition), which are addressed in other parts (e.g., Part 15).

#### **6.001 Applicability.**

This part applies to all acquisitions except—

- (a) Contracts awarded using the small purchase procedures of Part 13;
- (b) Contracts awarded using contracting procedures (other than those addressed in this part) that are expressly authorized by statute;
- (c) Contract modifications, including the exercise of priced options that were evaluated as part of the initial competition (see 17.207(f)), that are within the scope and under the terms of an existing contract;
- (d) Orders placed under requirements contracts or definite-quantity contracts; or
- (e) Orders placed under indefinite-quantity contracts that were entered into pursuant to this part when—
  - (1) The contract was awarded under Subpart 6.1 or 6.2 and all responsible sources were realistically permitted to compete for the requirements contained in the order; or
  - (2) The contract was awarded under Subpart 6.3 and the required justification and approval adequately covers the requirements contained in the order.

#### **6.002 Limitations.**

No agency shall contract for supplies or services from another agency for the purpose of avoiding the requirements of this part.

#### **6.003 Definitions.**

“Full and open competition,” when used with respect to a contract action, means that all responsible sources are permitted to compete.

“Procuring activity,” as used in this part, means a component of an executive agency having a significant acquisition function and designated as such by the head of the agency. Unless agency regulations specify otherwise, the term “procuring activity” shall be synonymous with “contracting activity” as defined in Subpart 2.1.

“Sole source acquisition” means a contract for the purchase of supplies or services that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source.

“Unique and innovative concept,” when used relative to an unsolicited research proposal, means that, in the opinion and to the knowledge of the Government evaluator, the meritorious proposal is the product of original thinking submitted in confidence by one source; contains new novel or changed concepts, approaches, or methods; was not submitted previously by another; and, is not otherwise available within the Federal Government. In this context, the term does not mean that the source has the sole capability of performing the research.

### **SUBPART 6.1—FULL AND OPEN COMPETITION**

#### **6.100 Scope of subpart.**

This subpart prescribes the policy and procedures that are to be used to promote and provide for full and open competition.

#### **6.101 Policy.**

(a) 10 U.S.C. 2304 and 41 U.S.C. 253 require, with certain limited exceptions (see Subparts 6.2 and 6.3), that contracting officers shall promote and provide for full and open competition in soliciting offers and awarding Government contracts.



(b) Contracting officers shall provide for full and open competition through use of the competitive procedure or combination of competitive procedures contained in this subpart that is best suited to the circumstances of the contract action. Contracting officers must use good judgment in selecting the procedure that best meets the needs of the Government.

#### **6.102 Use of competitive procedures.**

The competitive procedures available for use in fulfilling the requirement for full and open competition are as follows:

- (a) *Sealed bids.* (See 6.401(a).)
- (b) *Competitive proposals.* (See 6.401(b).) If sealed bids are not appropriate under (a) above, contracting officers shall request competitive proposals or use the other competitive procedures under (c) or (d) below.
- (c) *Combination of competitive procedures.* If sealed bids are not appropriate, contracting officers may use any combination of competitive procedures (e.g., two-step sealed bidding).
- (d) *Other competitive procedures.* (1) Selection of sources for architect-engineer contracts in accordance with the provisions of Pub. L. 92-582 (40 U.S.C. 541, et seq.) is a competitive procedure (see Subpart 36.6 for procedures).  
(2) Competitive selection of basic and applied research and that part of development not related to the development of a specific system or hardware procurement is a competitive procedure if award results from—
  - (i) A broad agency announcement that is general in nature identifying areas of research interest, including criteria for selecting proposals, and soliciting the participation of all offerors capable of satisfying the Government's needs; and
  - (ii) A peer or scientific review.
- (3) Use of multiple award schedules issued under the procedures established by the Administrator of General Services consistent with the requirement of 41 U.S.C. 259(b)(3)(A) for the multiple award schedule program of the General Services Administration is a competitive procedure if ordering offices follow the procedures in 8.405-1 in placing orders under this program.

### **SUBPART 6.2—FULL AND OPEN COMPETITION AFTER EXCLUSION OF SOURCES**

#### **6.200 Scope of subpart.**

This subpart prescribes policy and procedures for providing for full and open competition after excluding one or more sources.

#### **6.201 Policy.**

Acquisitions made under this subpart require use of the competitive procedures prescribed in 6.102 after agencies have excluded a source or sources from participation in a contract action under the circumstances described in 6.202 or 6.203 below.

#### **6.202 Establishing or maintaining alternative sources.**

- (a) Agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would—
  - (1) Increase or maintain competition and likely result in reduced overall costs for the acquisition, or for any anticipated acquisition, of such supplies or services;
  - (2) Be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the supplies or services in case of a national emergency or industrial mobilization; or
  - (3) Be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.
- (b)(1) Every proposed contract action under the authority of paragraph (a) above shall be supported by a determination and findings (D&F) (see Subpart 1.7) signed by the head of the agency or designee. This D&F shall not be made on a class basis.
- (2) Technical and requirements personnel are responsible for providing all necessary data to support their recommendation to exclude a particular source.
- (3) When the authority in (a)(1) above is cited, the findings shall include a description of the estimated reduction in overall costs and how the estimate was derived.



### **6.203 Set-asides for small business and labor surplus area concerns.**

(a) To fulfill the statutory requirements relating to small business concerns and labor surplus area concerns, contracting officers may set aside solicitations to allow only such business concerns to compete. This includes contract actions conducted under the Small Business Innovation Research Program established under Pub. L. 97-219.

(b) No separate justification or determination and findings is required under this part to set aside a contract action for small business or labor surplus area concerns.

(c) Subpart 19.5 prescribes policies and procedures that shall be followed with respect to small business set-asides.

(d) Subpart 20.2 prescribes policies and procedures that shall be followed with respect to labor surplus area set-asides.

### **6.204 Section 8(a) competition.**

(a) To fulfill statutory requirements relating to section 8(a) of the Small Business Act, as amended by Pub. L. 100-656, contracting officers may limit competition to eligible 8(a) contractors (see Subpart 19.8).

(b) No separate justification or determination and findings is required under this part to limit competition to eligible 8(a) contractors.

## **SUBPART 6.3—OTHER THAN FULL AND OPEN COMPETITION**

### **6.300 Scope of subpart.**

This subpart prescribes policies and procedures, and identifies the statutory authorities, for contracting without providing for full and open competition.

#### **6.301 Policy.**

(a) 41 U.S.C. 253(c) and 10 U.S.C. 2304(c) each authorize, under certain conditions, contracting without providing for full and open competition. The Department of Defense, Coast Guard, and National Aeronautics and Space Administration are subject to 10 U.S.C. 2304(c). Other executive agencies are subject to 41 U.S.C. 253(c). Contracting without providing for full and open competition or full and open competition after exclusion of sources is a violation of statute, unless permitted by one of the exceptions in 6.302.

(b) Each contract awarded without providing for full and open competition shall contain a reference to the specific authority under which it was so awarded. Contracting officers shall use the U.S. Code citation applicable to their agency (see 6.302).

(c) Contracting without providing for full and open competition shall not be justified on the basis of (1) a lack of advance planning by the requiring activity or (2) concerns related to the amount of funds available (e.g., funds will expire) to the agency or activity for the acquisition of supplies or services.

(d) When not providing for full and open competition, the contracting officer shall solicit offers from as many potential sources as is practicable under the circumstances.

(e) For contracts under this subpart, the contracting officer shall use the contracting procedures prescribed in 6.102(a) or (b), if appropriate, or any other procedures authorized by this regulation.

### **6.302 Circumstances permitting other than full and open competition.**

The following statutory authorities (including applications and limitations) permit contracting without providing for full and open competition. Requirements for justifications to support the use of these authorities are in 6.303.

#### **6.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.**

(a) *Authority.*

(1) Citations: 10 U.S.C. 2304(c)(1) or 41 U.S.C. 253(c)(1).

(2) When the supplies or services required by the agency are available from only one responsible source, or, for DOD, NASA, and the Coast Guard, from only one or a limited number of responsible sources, and no other type of supplies or services will satisfy agency requirements, full and open competition need not be provided for.

(i) Supplies or services may be considered to be available from only one source if the source has submitted an unsolicited research proposal that (A) demonstrates a unique and innovative concept, or, demonstrates a unique



capability of the source to provide the particular research services proposed; (B) offers a concept or services not otherwise available to the Government; and, (C) does not resemble the substance of a pending competitive acquisition. (See 10 U.S.C. 2304(d)(1)(A) and 41 U.S.C. 253(d)(1)(A).)

(ii) Supplies may be deemed to be available only from the original source in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment, including major components thereof, when it is likely that award to any other source would result in (A) substantial duplication of cost to the Government that is not expected to be recovered through competition, or (B) unacceptable delays in fulfilling the agency's requirements. (See 10 U.S.C. 2304(d)(1)(B) or 41 U.S.C. 253 (d)(1)(B).)

(iii) For DOD, NASA, and the Coast Guard, services may be deemed to be available only from the original source in the case of follow-on contracts for the continued provision of highly specialized services when it is likely that award to any other source would result in (A) substantial duplication of cost to the Government that is not expected to be recovered through competition, or (B) unacceptable delays in fulfilling the agency's requirements. (See 10 U.S.C. 2304(d)(1)(B).)

(b) *Application.* This authority shall be used, if appropriate, in preference to the authority in 6.302-7; it shall not be used when any of the other circumstances is applicable. Use of this authority may be appropriate in situations such as the following (these examples are not intended to be all inclusive and do not constitute authority in and of themselves):

(1) When there is a reasonable basis to conclude that the agency's minimum needs can only be satisfied by (i) unique supplies or services available from only one source or only one supplier with unique capabilities; or, (ii) for DOD, NASA, and the Coast Guard, unique supplies or services available from only one or a limited number of sources or from only one or a limited number of suppliers with unique capabilities.

(2) The existence of limited rights in data, patent rights, copyrights, or secret processes; the control of basic raw material; or similar circumstances, make the supplies and services available from only one source (however, the mere existence of such rights or circumstances does not in and of itself justify the use of these authorities) (see Part 27).

(3) When acquiring electric power or energy, gas (natural or manufactured), water, or other utility services, circumstances may dictate that only one supplier can furnish the service (see 8.304-5(d)); or when the contemplated contract is for construction of a part of a utility system and the utility company itself is the only source available to work on the system.

(4) When the agency head has determined in accordance with the agency's standardization program that only specified makes and models of technical equipment and parts will satisfy the agency's needs for additional units or replacement items, and only one source is available.

(c) *Application for brand name descriptions.* An acquisition that uses a brand name description or other purchase description to specify a particular brand name, product, or feature of a product, peculiar to one manufacturer does not provide for full and open competition regardless of the number of sources solicited. It shall be justified and approved in accordance with FAR 6.303 and 6.304. The justification should indicate that the use of such descriptions in the acquisition is essential to the Government's requirements, thereby precluding consideration of a product manufactured by another company. (Brand-name or equal descriptions, and other purchase descriptions that permit prospective contractors to offer products other than those specifically referenced by brand name, provide for full and open competition and do not require justifications and approvals to support their use.)<sup>6</sup>

(d) *Limitations.* (1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304.

(2) For contracts awarded using this authority, the notices required by 5.201 shall have been published and any bids and proposals must have been considered. (See 15.402(h).)

## **6.302-2 Unusual and compelling urgency.**

(a) *Authority.*

(1) Citations: 10 U.S.C. 2304(c)(2) or 41 U.S.C. 253(c)(2).

(2) When the agency's need for the supplies or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals, full and open competition need not be provided for.

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(b) *Application.* This authority applies in those situations where (1) an unusual and compelling urgency precludes full and open competition, and (2) delay in award of a contract would result in serious injury, financial or other, to the Government.

(c) *Limitations.* (1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304. These justifications may be made and approved after contract award when preparation and approval prior to award would unreasonably delay the acquisition.

(2) This statutory authority requires that agencies shall request offers from as many potential sources as is practicable under the circumstances.

#### **6.302-3 Industrial mobilization; or engineering, developmental, or research capability.**

(a) *Authority.*

(1) Citations: 10 U.S.C. 2304(c)(3) or 41 U.S.C. 253(c)(3).

(2) Full and open competition need not be provided for when it is necessary to award the contract to a particular source or sources in order (i) to maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency or to achieve industrial mobilization, or (ii) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

(b) *Application.* (1) Use of the authority in paragraph (a)(2)(i) above may be appropriate when it is necessary to—

(i) Keep vital facilities or suppliers in business or make them available in the event of a national emergency;

(ii) Train a selected supplier in the furnishing of critical supplies or services; prevent the loss of a supplier's ability and employees' skills; or maintain active engineering, research, or development work;

(iii) Maintain properly balanced sources of supply for meeting the requirements of acquisition programs in the interest of industrial mobilization (when the quantity required is substantially larger than the quantity that must be awarded in order to meet the objectives of this authority, that portion not required to meet such objectives will be acquired by providing for full and open competition, as appropriate, under this part);

(iv) Limit competition for current acquisition of selected supplies or services approved for production planning under the Department of Defense Industrial Preparedness Program to planned producers with whom industrial preparedness agreements for those items exist, or limit award to offerors who agree to enter into industrial preparedness agreements;

(v) Create or maintain the required domestic capability for production of critical supplies by limiting competition to items manufactured in the United States or the United States and Canada;

(vi) Continue in production, contractors that are manufacturing critical items, when there would otherwise be a break in production;

(vii) Divide current production requirements among two or more contractors to provide for an adequate industrial mobilization base; or

(viii) Acquire items covered by Subpart 8.2, Jewel Bearings and Related Items.

(2) Use of the authority in paragraph (a)(2)(ii) above may be appropriate when it is necessary to—

(i) Establish or maintain an essential capability for theoretical analyses, exploratory studies, or experiments in any field of science or technology;

(ii) Establish or maintain an essential capability for engineering or developmental work calling for the practical application of investigative findings and theories of a scientific or technical nature; or

(iii) Contract for supplies or services as are necessary incident to paragraphs (b)(2)(i) or (ii) above.

(c) *Limitations.* Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304.

#### **6.302-4 International agreement.**

(a) *Authority.*

(1) Citations: 10 U.S.C. 2304(c)(4) or 41 U.S.C. 253(c)(4).

(2) Full and open competition need not be provided for when precluded by the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or the written directions of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government.

(b) *Application.* This authority may be used in circumstances such as—



(1) When a contemplated acquisition is to be reimbursed by a foreign country that requires that the product be obtained from a particular firm as specified in official written direction such as a Letter of Offer and Acceptance; or

(2) When a contemplated acquisition is for services to be performed, or supplies to be used, in the sovereign territory of another country and the terms of a treaty or agreement specify or limit the sources to be solicited.

(c) *Limitations.* Except for DoD, NASA, and the Coast Guard, contracts awarded using this authority shall be supported by written justifications and approvals described in 6.303 and 6.304.

#### **6.302-5 Authorized or required by statute.**

(a) *Authority.*

(1) Citations: 10 U.S.C. 2304(c)(5) or 41 U.S.C. 253(c)(5).

(2) Full and open competition need not be provided for when (i) a statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source, or (ii) the agency's need is for a brand name commercial item for authorized resale.

(b) *Application.* This authority may be used when statutes, such as the following, expressly authorize or require that acquisition be made from a specified source or through another agency:

(1) Federal Prison Industries (UNICOR)—18 U.S.C. 4124 (see Subpart 8.6);

(2) Qualified Nonprofit Agencies for the Blind or other Severely Handicapped—41 U.S.C. 46-48c (see Subpart 8.7);

(3) Government Printing and Binding—44 U.S.C. 501-504, 1121 (see Subpart 8.8); or

(4) Sole source awards under the 8(a) Program—15 U.S.C. 637 (see Subpart 19.8).

(c) *Limitations.* (1) The authority in paragraph (a)(2)(ii) above may be used only for purchases of brand-name commercial items for resale through commissaries or other similar facilities. Ordinarily, these purchases will involve articles desired or preferred by customers of the selling activities (but see 6.301(d)).

(2) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304, except for—

(i) Contracts awarded under (a)(2)(ii), (b)(2), or (b)(4) of this subsection; or

(ii) Contracts awarded under (a)(2)(i) of this subsection when the statute expressly requires that the procurement be made from a specified source. (Justification and approval requirements apply when the statute authorizes, but does not require, that the procurement be made from a specified source.)

#### **6.302-6 National security.**

(a) *Authority.*

(1) Citations: 10 U.S.C. 2304(c)(6) or 41 U.S.C. 253(c)(6).

(2) Full and open competition need not be provided for when the disclosure of the agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals.

(b) *Application.* This authority may be used for any acquisition when disclosure of the Government's needs would compromise the national security (e.g., would violate security requirements); it shall not be used merely because the acquisition is classified, or merely because access to classified matter will be necessary to submit a proposal or to perform the contract.

(c) *Limitations.* (1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304.

(2) See 5.202(a)(1) for synopsis requirements.

(3) This statutory authority requires that agencies shall request offers from as many potential sources as is practicable under the circumstances.

#### **6.302-7 Public interest.**

(a) *Authority.*

(1) Citations: 10 U.S.C. 2304(c)(7) or 41 U.S.C. 253(c)(7).

(2) Full and open competition need not be provided for when the agency head determines that it is not in the public interest in the particular acquisition concerned.

(b) *Application.* This authority may be used when none of the other authorities in 6.302 apply.

(c) *Limitations.* (1) A written determination to use this authority shall be made in accordance with Subpart 1.7, by (i) the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force,



the Secretary of Transportation for the Coast Guard, or the Administrator of the National Aeronautics and Space Administration; or (ii) the head of any other executive agency. This authority may not be delegated.

(2) The Congress shall be notified in writing of such determination not less than 30 days before award of the contract.

(3) If required by the head of the agency, the contracting officer shall prepare a justification to support the determination under paragraph (c)(1) above.

(4) This Determination and Finding (D&F) shall not be made on a class basis.

### **6.303 Justifications.**

#### **6.303-1 Requirements.**

(a) A contracting officer shall not commence negotiations for a sole source contract, commence negotiations for a contract resulting from an unsolicited proposal, or award any other contract without providing for full and open competition unless the contracting officer—

(1) Justifies, if required in 6.302, the use of such actions in writing;

(2) Certifies the accuracy and completeness of the justification; and

(3) Obtains the approval required by 6.304.

(b) Technical and requirements personnel are responsible for providing and certifying as accurate and complete necessary data to support their recommendation for other than full and open competition.

(c) Justifications required by paragraph (a) above may be made on an individual or class basis. Any justification for contracts awarded under the authority of 6.302-7 shall only be made on an individual basis. Whenever a justification is made and approved on a class basis, the contracting officer must ensure that each contract action taken pursuant to the authority of the class justification and approval is within the scope of the class justification and approval and shall document the contract file for each contract action accordingly.

(d) Contract actions subject to the Agreement on Government Procurement (see Subpart 25.4, Foreign Acquisition) may be made without providing for full and open competition only when permitted and justified pursuant to this subpart. If, in such a contract action, the authority of 6.302-3(a)(2)(i) or 6.302-7 is being cited as a basis for not providing for full and open competition, a copy of the justification shall also be forwarded, in accordance with agency procedures, to the agency's point of contact with the Office of the United States Trade Representative.

(e) The justifications for contracts awarded under the authority cited in 6.302-2 may be prepared and approved within a reasonable time after contract award when preparation and approval prior to award would unreasonably delay the acquisitions.

#### **6.303-2 Content.**

(a) Each justification shall contain sufficient facts and rationale to justify the use of the specific authority cited. As a minimum, each justification shall include the following information:

(1) Identification of the agency and the contracting activity, and specific identification of the document as a "Justification for other than full and open competition."

(2) Nature and/or description of the action being approved.

(3) A description of the supplies or services required to meet the agency's needs (including the estimated value).

(4) An identification of the statutory authority permitting other than full and open competition.

(5) A demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the authority cited.

(6) A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable, including whether a CBD notice was or will be publicized as required by Subpart 5.2 and, if not, which exception under 5.202 applies.

(7) A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable.

(8) A description of the market survey conducted (see 7.101) and the results or a statement of the reasons a market survey was not conducted.

(9) Any other facts supporting the use of other than full and open competition, such as:

(i) Explanation of why technical data packages, specifications, engineering descriptions, statements of work, or purchase descriptions suitable for full and open competition have not been developed or are not available.



(ii) When 6.302-1 is cited for follow-on acquisitions as described in 6.302-1(a)(2)(ii), an estimate of the cost to the Government that would be duplicated and how the estimate was derived.

(iii) When 6.302-2 is cited, data, estimated cost, or other rationale as to the extent and nature of the harm to the Government.

(10) A listing of the sources, if any, that expressed, in writing, an interest in the acquisition.

(11) A statement of the actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required.

(12) Contracting officer certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.

(b) Each justification shall include evidence that any supporting data that is the responsibility of technical or requirements personnel (e.g., verifying the Government's minimum needs or schedule requirements or other rationale for other than full and open competition) and which form a basis for the justification have been certified as complete and accurate by the technical or requirements personnel.

#### **6.304 Approval of the justification.**

(a) Except for paragraph (b) of this section, the justification for other than full and open competition shall be approved in writing—

(1) For a proposed contract not exceeding \$100,000, the contracting officer's certification required by 6.303-2(a)(12) will serve as approval unless a higher approving level is established in agency procedures.

(2) For a proposed contract over \$100,000 but not exceeding \$1,000,000, by the competition advocate for the procuring activity designated pursuant to 6.501. This authority is not delegable.

(3) For a proposed contract over \$1,000,000 but not exceeding \$10,000,000, by the head of the procuring activity, or a designee who—

(i) If a member of the armed forces, is a general or flag officer; or

(ii) If a civilian, is serving in a position in grade GS 16 or above under the General Schedule (or in a comparable or higher position under another schedule).

(4) Except for DOD, NASA, and the Coast Guard, for a proposed contract over \$10,000,000, by the senior procurement executive of the agency designated pursuant to the OFPP Act (41 U.S.C. 414(3)) in accordance with agency procedures. This authority is not delegable.

(b) Any justification for a contract awarded under the authority of 6.302-7, regardless of dollar amount, shall be considered approved when the determination required by 6.302-7(c)(1) is made.

(c) A class justification for other than full and open competition shall be approved in writing in accordance with agency procedures. The approval level shall be determined by the estimated total value of the class.

(d) The estimated dollar value of all options shall be included in determining the approval level of a justification.

#### **6.305 Availability of the justification.**

(a) The justifications required by 6.303-1 and any related information shall be made available for public inspection as required by 10 U.S.C. 2304(f)(4) and 41 U.S.C. 303(f)(4). Contracting officers shall carefully screen all justifications for contractor proprietary data and remove all such data, and such references and citations as are necessary to protect the proprietary data, before making the justifications available for public inspection. Contracting officers shall also be guided by the exemptions to disclosure of information contained in the Freedom of Information Act (5 U.S.C. 552) in determining whether other data should be removed.

(b) If a Freedom of Information request is received, contracting officers shall comply with Subpart 24.2.

### **SUBPART 6.4—SEALED BIDDING AND COMPETITIVE PROPOSALS**

#### **6.401 Sealed bidding and competitive proposals.**

Sealed bidding and competitive proposals, as described in Parts 14 and 15, are both acceptable procedures for use under Subparts 6.1, 6.2 and, when appropriate, under Subpart 6.3. Contracting officers shall exercise good judgment in selecting the method of contracting that best meets the needs of the Government. If the choice is to use competitive proposals rather than sealed bidding, the contracting officer shall briefly explain in writing, which of the four conditions in paragraph (a) of this section has not been met. No additional documentation or justification is required.

(a) *Sealed bids.* (See Part 14 for procedures.) Contracting officers shall solicit sealed bids if—



- (1) Time permits the solicitation, submission, and evaluation of sealed bids;
- (2) The award will be made on the basis of price and other price-related factors;
- (3) It is not necessary to conduct discussions with the responding offerors about their bids; and
- (4) There is a reasonable expectation of receiving more than one sealed bid.

(b) *Competitive proposals.* (See Part 15 for procedures.)

(1) Contracting officers may request competitive proposals if sealed bids are not appropriate under paragraph (a) above.

(2) Because of differences in areas such as law, regulations, and business practices, it is generally necessary to conduct discussions with offerors relative to proposed contracts to be made and performed outside the United States, its possessions, or Puerto Rico. Competitive proposals will therefore be used for these contracts unless discussions are not required and the use of sealed bids is otherwise appropriate.

## **SUBPART 6.5—COMPETITION ADVOCATES**

### **6.501 Requirement.**

As required by Section 20 of the Office of Federal Procurement Policy Act, the head of each executive agency shall designate a competition advocate for the agency and for each procuring activity of the agency. The competition advocates shall—

- (a) Be in positions other than that of the agency senior procurement executive;
- (b) Not be assigned any duties or responsibilities that are inconsistent with 6.502 below; and
- (c) Be provided with staff or assistance (e.g., specialists in engineering, technical operations, contract administration, financial management, supply management, and utilization of small and disadvantaged business concerns), as may be necessary to carry out the advocate's duties and responsibilities.

### **6.502 Duties and responsibilities.**

(a) Agency competition advocates shall—

(1) Be responsible for challenging barriers to and promoting full and open competition in the acquisition of supplies and services by the agency;

(2) Review the contracting operations of the agency and identify and report to the agency senior procurement executive—

(i) Opportunities and actions taken to achieve full and open competition in the contracting operations of the agency; and

(ii) Any condition or action that has the effect of unnecessarily restricting competition in the contract actions of the agency;

(3) Prepare and submit an annual report to the agency senior procurement executive, in accordance with agency procedures, describing—

(i) Such advocate's activities under this subpart;

(ii) New initiatives required to increase competition;

(iii) Any barriers to full and open competition that remain; and

(iv) Other ways in which the agency has emphasized competition in areas such as acquisition training and research;

(4) Recommend to the senior procurement executive of the agency goals and plans for increasing competition on a fiscal year basis; and

(5) Recommend to the senior procurement executive of the agency a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in acquisition.

(b) Procuring activity competition advocates designated pursuant to 6.501 shall be responsible for—

(1) Promoting full and open competition in the procuring activity; and

(2) Challenging barriers to such competition, including unnecessarily detailed specifications and unnecessarily restrictive statements of need.



# CLASSROOM MATERIALS FOR LESSON 4

## ACQUISITION ROLES AND RESPONSIBILITIES WITHIN AN AGENCY (THE PLAYERS)

**Lesson Learning  
Objective**

At the completion of this lesson, you will be able to:

- Describe a typical approach to organizing the acquisition function.
- Define the Law of Agency.
- Identify and define the roles and responsibilities of contracting officers, other contracting personnel, requirements managers, contracting officer representatives, and other interested parties.

**Estimated Time**

One hour.

**Method of Instruction**

Lecture, questions/ answers, and a case study.

**Student Materials**

Text/Reference----Chapter 4.

Lesson 4 classroom materials



## **ROLEPLAY**

### **DID WE REALLY BUY A \$300 HAMMER?**

- HCA: I called this meeting so that we can discuss the GAO report that was critical of some of our buying practices.
- Lawyer: Critical is right! They really hit us for paying \$300 each for a quantity of 500 hammers from an Indonesian-based. It looks to me like their criticism is justified.
- HCA: Maybe or maybe not. But we need the facts. The press is aware of the report and the agency head wants us to prepare a response to GAO right away. Hopefully, it will soften public criticism of our agency. Budget hearings start next month on the "Hill" and we don't want adverse publicity.
- CO: (to the HCA) Well, you know that I handled this purchase. I didn't get competition because the requiring activity said that the hammers are custom designed for underwater use by Navy SEALs, and that Arm and Hammer alone was willing to meet their specs in time to get the hammers to the SEALs.
- Lawyer: The Navy uses seals?
- CO: SEALs are underwater demolition experts. Most of their equipment is of special design. Anyhow, the requiring activity said that only one company could make the hammers.
- HCA: Did they justify that to you in writing?
- CO: I didn't ask them to -- should I have? I felt they knew more about their needs than I do.
- Engineer: That's right! We know what we want and who can give us what we want. In fact, we talked to 2 or 3 tool companies before we came to you. Arm and Hammer agreed to charge no more than \$300, and that was the best price we got over the phone anyway. No American firm was willing to charge less than \$315 per hammer. It seems to me that the contracting office should buy what we engineers want!
- HCA: Then you admit that the requirement could have been competed?
- Engineer: Not if we were to get delivery when I wanted delivery. The SEALs need the hammers for an underwater construction project that begins this June. Arm and Hammer was the only company willing to take my specs over the phone and begin work. Their shop foreman promised me that the hammers would be ready for shipment by the time the CO got the paperwork to Arm and Hammer's front office.
- Lawyer: How long have you known that the hammers are needed?
- Engineer: What is this--the third degree? We didn't commit any crime here! So I knew last September that the SEALs would need these hammers; but, hey, I have other work to do. I didn't have time to work up a purchase request until last April.



- Lawyer: You may not have committed a crime, but by not knowing, or following, procurement procedures, you have helped put this agency in an embarrassing position. This procurement seems to have violated several statutes.
- CO: Really? I am fairly new at this. I referred to some of the regulations but I didn't look at the statutes. What statutes are you talking about? Also, I don't really understand what the GAO has to do with this. I thought they audited accounting records.
- HCA: (to the CO) How about the Competition in Contracting Act , the Buy American Act, and any number of provisions of the Federal Property and Administrative Services Act? We can talk about that and the GAO later. I realize that because of a heavy workload we gave you assignments without proper training. In fact, we plan to send you to the Basic Procurement course next month.
- Engineer: Lets get back to the hammers. We got what we needed when we needed them and, as far as I know, \$300.00 each isn't too much for these custom-tailored, underwater hammers.
- Lawyer: Maybe not, but GAO doesn't see it that way. Their opinion may influence the appropriation committees to really challenge our budget requests.
- HCA: Right now, I am not concerned with next year's budget. What I want is to list the factors we should have considered in making this purchase. Then, we will see what the outcome might have been if we had touched all bases. Maybe we will "luck-out" and be able to show that the purchase wasn't so bad after all.

### **QUESTIONS:**

- 1. Looking at the goals of the acquisition process from Chapter 1, which, if any, were at risk in this scenario?**
  
  
  
  
  
  
  
  
  
  
- 2. Was it fair for the lawyer to criticize the CO's ignorance of statutes?**
  
  
  
  
  
  
  
  
  
  
- 3. Critique the role of each player in this process.**



Acquisition Roles and Responsibilities Within An Agency  
(The Players) (Classroom Materials)



# **CLASSROOM MATERIALS FOR LESSON 5**

## **INTRODUCTION TO THE FEDERAL ACQUISITION PROCESS**

**Lesson Learning  
Objective**

At the completion of this lesson, you will be able to:

- State the three phases of the acquisition process.
- Identify the functions and business issues associated with each phase.
- Describe the relationship between acquisition goals and functions.

**Estimated Time**

40 minutes.

**Method of Instruction**

Lecture/Discussion.

**Student Materials**

Text/Reference----Chapter 5.

Lesson 5 classroom materials







# CLASSROOM MATERIALS FOR LESSON 6

## THE PRESOLICITATION PHASE

### **Lesson Learning Objective**

At the completion of this lesson, you will be able:

- List and describe duties related to determining the need.
- List and describe duties related to initiating the procurement.
- List and describe duties related to analyzing the requirement.
- List and describe duties related to sourcing the requirement.

### **Estimated Time**

Five hours and fifty minutes (excluding breaks and lunch).

### **Method of Instruction**

Lecture, questions/answers, interactive viewgraphs, roleplays, and group exercises.

### **Student Materials**

Text/Reference--Chapter 6.

Lesson 6 Classroom Materials



# **BASIC BUSINESS QUESTIONS BY FUNCTION**

## **6.1 Determination of Need**

What does the Government need, and how can the Government best meet the need?

Write in Answer Here:

### **6.2.1 Processing the Purchase Request**

Is the PR acceptable as the basis for the procurement and what are the steps in initiating the procurement.

Write in Answer Here:

### **6.2.2 Market Research**

What facts do you need about the requirement and the market to make good business decisions and where do you get these facts?

Write in Answer Here:



### **6.3 Analysis of Requirement**

How can the Government's requirements be stated so as to yield the best market response?

Write in Answer Here:

#### **6.4.1 Extent of Competition**

Who should you allow to compete for the procurement?

Write in Answer Here:

#### **6.4.2 Selection Factors**

What factors should you apply in selecting a competing offeror for award?

Write in Answer Here:

#### **6.4.3 Method of Procurement**

Which method of procurement will best serve the Government's need?

Write in Answer Here:



#### **6.4.4 Procurement Plans**

What milestones will be tracked in soliciting and evaluating offers? Who will participate on the source selection team? What roles, responsibilities, and milestones will be assigned to each participant?

Write in Answer Here:



## THE SMOKETOWN SCENARIO

The Environmental Protection Agency (EPA) has issued new air quality standards for coal-burning heat and electric generating plants. The standards will take effect in three years.

When these standards take effect, the Government's Smoketown Plant will be in violation. The plant is in West Virginia. It currently burns 100 tons of West Virginia coal each day. To comply with the new standards, the plant must reduce its emissions of five airborne chemicals by 20% each. The following is the list of seven chemicals, with the new EPA limits on daily emissions:

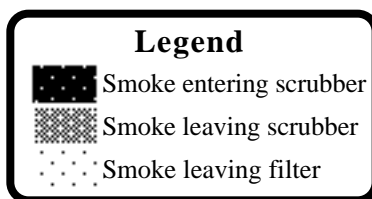
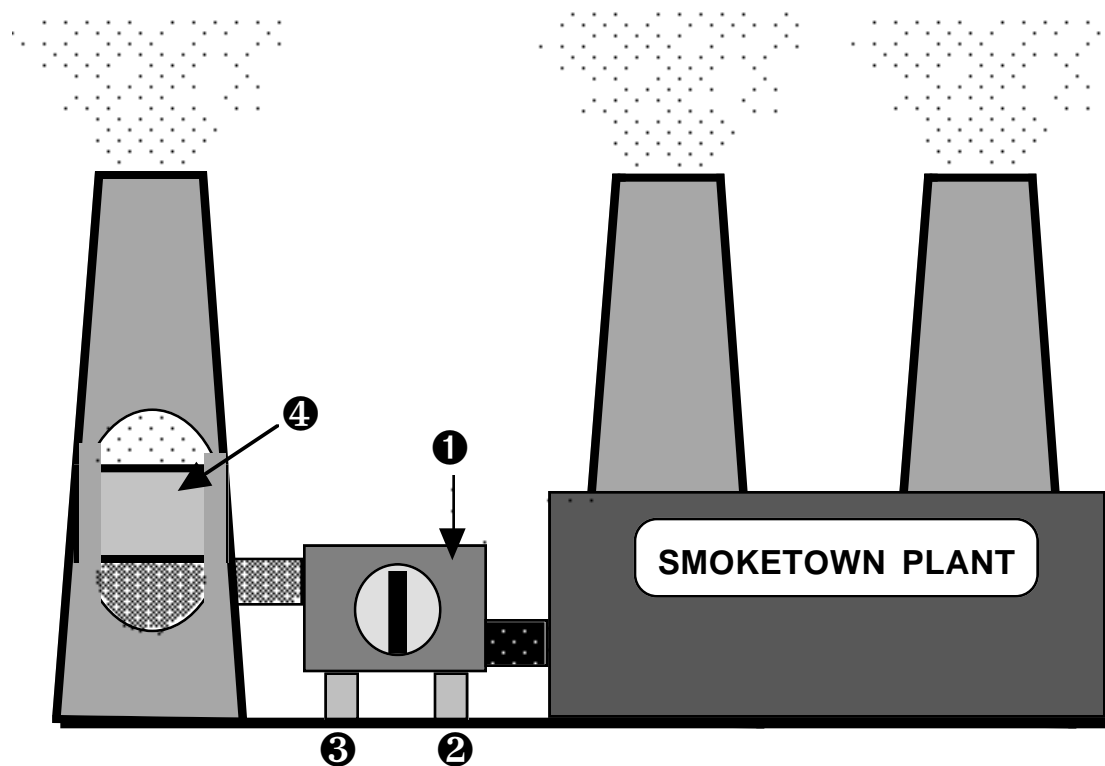
Ash and Other Particulates:...	1 Ton
Sulfur Dioxide: .....	30 Pounds
Nitrogen Dioxide: .....	10 Pounds
Carbon monoxide:.....	10 Pounds
Hydrocarbons.....	20 Pounds

The Program Manager (PM) is Mark Smith. The Contracting Officer (CO) is Strong Jones.

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### EXISTING SMOKETOWN POLLUTION CONTROL SYSTEM

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- ① Scrubber. Scrubbers use water to wash pollutants out of the smoke. The cut-away shows the pump (the black pole). Dashed lines represent the spray of water from the pump.
- ② Water pipe in.
- ③ Drain pipe.
- ④ Filter. It works much like a cigarette filter.



## Roleplay #1

**Mark Smith (PM):** Have you heard about the new EPA standards regarding the effectiveness of pollution-control devices in smoke stacks?

**Strong Jones (CO):** Yes, I've heard about them.

**Smith:** Perhaps you didn't know that our stacks do not meet the new standards. In fact, I am here to see whether you can help resolve a very serious problem.

**Jones:** OK. What's the problem?

**Smith:** We must either close the Smoketown plant and do the work elsewhere, or reduce our operations by about 20%. Either way, our ability to fulfill our mission will be severely limited.

**Jones:** Any other options?

**Smith:** One would be to totally replace our equipment. That means replacing the stacks also. We don't believe we can afford the time or the cost of total replacement. However, we believe our equipment might be upgraded at an affordable price, but we are not sure.

**Jones:** So, to summarize, your four options are:

1. Permanently close the plant.
2. Reduce the plant's hours of operation by 20%.
3. Remove the existing emission control devices and replace them entirely with a new generation of filters and scrubbers.
4. Upgrade the existing pollution control equipment on the three smoke stacks.

**Smith:** That's right. I would like your help in researching these alternatives.

---

## Questions on the roleplay:

“What information might Jones provide Mark Smith to help Smith select an option and develop a plan for implementing it?”

“How might Jones help Smith in researching his alternatives for complying with the new EPA standard?”



# **INTERACTIVE VIEWGRAPH**

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## **ELEMENTS OF A TYPICAL ACQUISITION PLAN**

### **1. Acquisition Background and Objectives**

- 
- 
- 
- 
- 

### **2. Plan of Action**


- 
- 
- 
- 
-



## PURCHASE REQUEST HANDOUT

(Shaded areas are for use of procurement office only)

Page of

 <b>EPA</b> <b>PROCUREMENT REQUEST/ORDER</b>		1. Name of Originator Mark Smith		2. Date Of Requisition 15 April 1990			
		3. Mail Code 007	4. Telephone Number	5. Date Item Required 15 October 1991			
6. Signature of Originator			7. Recommended Procurement Method <input type="checkbox"/> Competitive <input type="checkbox"/> Other than FAOC <input type="checkbox"/> Sole source <input type="checkbox"/> small purchase				
8. Deliver To (Project Manager) Mark Smith		9. Address Plant Maintenance (R&D)		10. Mail Code RDPM	11. Telephone Number 555-5555		
12. Financial Data	a. Appropriation OM 17PQ12006	b. Servicing Finance Office No. HQ-1		NOTE: Item 12(d) Document Type--Contract ="C," Purchase Order = "P"			
FMO Use (c)(13 digits)		D T (d)	Document Control Number (e)(6 digits)	Account Number (f)(10 digits)	Object Class (g)(4 digits)		
2789650084301			105005	9878767654	0010		
13. Suggested Source (Name, Address, ZIP Code, Phone/Contact)			14. Amount of money committed is: <input type="checkbox"/> Original <input type="checkbox"/> Increase <input type="checkbox"/> Decrease		15. For Small Purchases Only: Contracting Office is authorized to exceed the amount shown in Block 12(h) by 10% or \$100, whichever is less. <input type="checkbox"/> Yes <input type="checkbox"/> No		
16. Approvals							
a. Branch/Office Joseph Lynch		Date 17Apr90	d. Property Management Officer/Designee R.T. Count		Date 24Apr90		
b. Division/Office Elizabeth Davis-Romano		Date 21Apr90	e. (Other (Specify) S.R. Block Facility Engineer		Date 27Apr90		
c. Funds listed in Block 12 and Block 15 (if any) are available and reserved. (Signature of Certifying Official)		Date 23Apr90	f. (Other (Specify)		Date		
17. Date of Order	18. Order Number		19. Contract Number (if any)		20. Discount Terms		
21. FOB Point		22. Delivery to FOB Point by On or before (Date)		23. Person Taking Order/Quote and Phone No.			
24. Contractor (Name, address, ZIP Code)		25. Type of Order <input type="checkbox"/> a. Purchase Please furnish the above on the terms specified on both sides of this order and on the attached sheets, if any, including delivery as indicated. <input type="checkbox"/> b. Delivery provisions on the reverse are deleted. The delivery order is subject to the terms and conditions of the contract. (See Block 19) c. <input type="checkbox"/> Oral <input type="checkbox"/> Written <input type="checkbox"/> Confirming		Reference your quote (See block 23)			
26. Schedule							
Item No. (a)	Supplies or Services (b)	Quantity Ordered (c)	Unit (d)	Estimated Unit Price (e)	Unit Price (f)	Amount (g)	Quantity Accepted (h)
				\$3 mil			
						Total \$	
27. United States of America By (Signature)				28. Typed Name and Title of Contracting Officer			

EPA Form 1900-8(Rev. 9-86) Previous editions are obsolete.



## **Roleplay #2**

**Jones (the CO):** Where is the certifying official's signature? Have funds been appropriated for this procurement?

**Smith (the PM):** I haven't spoken with the financial officer as yet. The PR is essentially done, except for your review, and I wanted to have you start on the procurement to save time. Sometimes the finance people can be so slow! I assure you that the funds will be available before the solicitation is ready to send out.

---

## **Questions on the roleplay:**



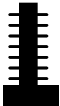

“Do you have any problem with Smith's answer? ”

“Why are COs so touchy about funding?”



# MARKET REPORT

**Table 1. A Typical Smokestack Upgrade Kit**

	<b>One Rebuilt Filter</b>  The contractors remove the existing filters and rebuild them, using newly developed filtration materials and technologies.
	<b>Three Replacement Brackets</b>  These brackets are bolted to the interior walls of the smokestack. Rebuilt filters generally weigh 2-3 times more than the original. New brackets are necessary to support the extra weight.
	<b>One Replacement Pump</b>  This pump replaces the Scrubber's existing pump. The new pumps handle much higher pressures than previous pumps—creating a finer, more effective spray.
	<b>One Chemical Tank</b>  This tank connects to the " <u>Water Pipe In</u> " of the Scrubber. The Scrubber's pump mixes water with chemicals from the tank and sprays the mixture into the Scrubber's chamber. The chemicals greatly boost the Scrubber's effectiveness in "precipitating" (i.e., washing) pollutants out of the smoke.

## I. Making and Installing the Upgrade Kit:

To supply an upgrade, the company must:

- Buy chemicals, parts for the Filter, and other supplies.
- Extract the existing Filter, ship it to its plant, and rebuild it.
- Design and make the Replacement Pump, based on (1) the dimensions of the existing Scrubber chamber and (2) existing plumbing and electrical connections.
- Mix the chemicals and fill the Tank.
- Transport the finished pieces to the site.
- Install the Replacement Pump, Chemical Tank, Replacement Brackets, and Rebuilt Filter.

Installation accounts for 20% of the cost of the upgrade.



# MARKET REPORT

## (PAGE 2 OF 4)

### II. Schedule

The upgrade packages are typically manufactured and installed over a six to nine month period per smokestack. Since Mark Smith, the Program Manager, needs to keep the test facility in full operation during the upgrading, he plans on shutting down only one smokestack at a time. This will require a period of performance of at least 18 months.

### III. Potential Suppliers

Five suppliers produce upgrades that are advertised as meeting the new EPA standards.

<b>Table 2. Suppliers Of Smokestack Upgrade Kits</b>		
Name		Where Upgrade Kits Are Manufactured
<b>A .</b>	Cleanco	Johnstown, Pa. 15906*
<b>B .</b>	Shackelford	East St. Louis, Ill. 62206*
<b>C .</b>	Scrubbco	East St. Louis, Ill. 62208*
<b>D .</b>	Blast	Detroit, MI 48225*
<b>E .</b>	Snuff-It	Vienna, VA 22180

\*Labor Surplus Areas.

Note that Company D, Blast, is the only firm that satisfies the Size Standards for classification as a Small Business. None are 8(a) suppliers. Also note that four companies are in Labor Surplus Areas.

In addition, two companies—WASH-OUT and DIRTCO—claim that their upgrade kits reduce total emissions by as much as 30%. However, these two companies do not represent their upgrade kits as capable of meeting the new EPA limits for each and every pollutant.



# MARKET REPORT

(PAGE 3 OF 4)

## IV. Distinguishing Characteristics of the Upgrade Packages

1. Each company has developed its own secret recipe for the contents of the Chemical Tank connected to the Scrubber.
2. Each company uses its own proprietary design for the filter.
3. The pumps being marketed by the firms differ, among other things, in terms of the maximum water pressure that each can accommodate.

**Table 3. Maximum Water Pressure By Pump**  
(In Pounds Per Square Inch—PSI)

Name		PSI Rating
<b>A .</b>	Cleanco	180
<b>B .</b>	Shackelford	177
<b>C .</b>	Scrubco	179
<b>D .</b>	Blast	175
<b>E .</b>	Snuff-It	166

## V. Market Prices:

Mark Smith, program manager for this acquisition, provided an independent cost estimate of \$3 million per smokestack. We were able to verify the reasonableness of this cost estimate from reports on upgrades acquired by private and public (State and local) buyers. Over the past year, prices have ranged from \$2,400,000 to \$2,900,000 per smokestack. Variations in price appear to largely be a function of:

- The physical shape and dimensions of the smokestack and scrubber chamber.
- Capacity, effectiveness, and condition of the existing filter.
- Time (all other things being equal, later buys have tended on average to be priced slightly higher than earlier buys).

## VI. Trends in Supply and Demand

As indicated above, we know of only five companies who allege that their upgrade packages can meet the new EPA requirements. Since the new EPA standards were announced, demand has soared. It appears that buyers for virtually every power plant in the U.S. and Canada are actively expressing interest in the upgrades. There have already been spot shortages of several chemicals and subassemblies required for the upgrades. Shortages of skilled labor have also been reported.



# MARKET REPORT

## (PAGE 4 OF 4)

### **VII. Commercial Terms:**

Reportedly, most of the sales have been on a firm fixed price basis. Most of the offerors advertise maintenance and repair services as separately priced options. Chemicals are supplied under indefinite delivery, “price per liter” arrangements.

Given the high upfront costs for manufacturing the equipment and the fact that any one smokestack may require six months of work, offerors have typically required private sector buyers to make down payments at the time of contract award. These down payments have been as high as 50% of the total price. In view of trends in supply and demand (see above), as often as not, offerors have received the down payments.

### **VIII. Concerns About Quality**

The upgrade packages are relatively new to the market and vary significantly from manufacturer to manufacturer. Hence, the track record of the upgrades is still largely unknown.

For example, there are no good data on such aspects of performance as system life, reliability, or maintainability. And, while as indicated above, five firms claim that their upgrade packages satisfy the new EPA standards, these claims are largely based on experimental prototypes.

Shortages of skilled labor may also lead some companies to employ relatively inexperienced and undertrained labor. This is of particular concern when it comes to installing the upgrade at the plant site. A faulty job of installation could allow pollutants to bypass the scrubbers and filters.

### **IX. Acquisition History**

The Smoketown plant's current scrubbers and filters were installed ten years ago by SAVE—EARTH, Inc. Five years ago, SAVE—EARTH, Inc., was acquired in a leveraged buyout by CLEANCO. CLEANCO has, over this period, competed for and repeatedly been awarded a contract for servicing and maintaining the scrubbers and filters. In addition, two years ago, CLEANCO was awarded a contract for a minor upgrading of the filters. Mark Smith, the Project Manager, has reported great satisfaction with CLEANCO's work and—as COTR for these various contracts—has had a good rapport with CLEANCO's staff.



## INTERACTIVE VIEWGRAPH

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### SPECIFICATIONS

**Place X in Appropriate Area**

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Examples of Specs	Functional	Performance	Design
1. Bathroom must include bathtub and separate shower. (SEE BLUEPRINTS)			
2. Provide gasoline powered generator capable of providing ____ watts at ____ amps of electricity for 24 hours on a single 30 gallon tank of fuel.			
3. Provide a communication system between construction site and program office			
4. 200 doz. cookies must be in accordance with FED Spec XYZ			
5. Develop a system for protecting the nose cone during reentry			
6. Provide 300 tons of steel capable of resisting high temperature to 200° F without breakdown			
7. "Janitorial Work" includes dusting, vacuuming, and emptying the trash			



# INTERACTIVE VIEWGRAPH

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## STATEMENT OF WORK

Which items are included in a statement of work?

	Yes/No
1. Packing, packaging, and marking requirements	
2. Names of contracting officials	
3. Contract clauses and solicitation provisions	
4. Delivery schedules or period of performance	
5. General scope of work/objectives	
6. Reporting requirements	
7. Inspection and acceptance criteria	
8. Contractor tasks	
9. Small Disadvantaged Business requirements	
10. Specifications for each deliverable	



## **INTERACTIVE VIEWGRAPH**

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### **SET-ASIDE PRIORITIES**

**Number from 1-5, with 1 being the highest priority**

- **Partial set-aside for small businesses**
- **Total labor surplus area set-aside for all concerns located in labor surplus areas**
- **Total set-aside for small businesses**
- **Total set-aside for small businesses located in labor surplus areas**
- **Partial set-aside for small businesses located in labor surplus areas**



## INTERACTIVE VIEWGRAPH

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### OTHER THAN FAOC

**Choose which have statutory authority  
for permitting other than FAOC**

	<b>Allow/Do Not Allow</b>
<b>1. Public interest</b>	
<b>2. Unusual and compelling urgency</b>	
<b>3. Only one responsible source and no other supplies/services will satisfy agency requirements</b>	
<b>4. Only one bid submitted</b>	
<b>5. National security</b>	
<b>6. Price reasonableness cannot be determined</b>	



## INTERACTIVE VIEWGRAPH

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### EVALUATION FACTORS

Price Related	Technical
1. Expected Life	
2. Technical approach	
3. Installation Capability	
4. Operating costs	
5. Scheduling of work	
6. Experience	
7. Qualifications of Key Personnel	
8. Mean time between failures	
9. Maintenance and Repair	
10. Buy American Act	



## INTERACTIVE VIEWGRAPH

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### POTENTIAL MILESTONES

	<i>Milestone</i>	<i>CO?</i>	<i>COTR?</i>	<i>Cont-ractor?</i>	<i>Other? (Write in)</i>
1.	Complete RFP				
2.	Forward CBD synopsis				
3.	Mail RFP				
4.	Submit by closing date				
5.	Open bids				
6.	Complete price analysis				
7.	Complete technical analysis				
8.	Rank offers on technical factors				
9.	Establish initial competitive range				
10.	Begin discussions				
11.	Conclude discussions				
12.	Due date for BAFOs				
13.	Rank BAFOs on technical factors				
14.	Identify the top ranked BAFO based on both technical factors and price				
15.	Recommend award to the SSA				
16.	Prepare contract				
17.	Execute contract.				



## The Presolicitation Phase (Classroom Materials)



# CLASSROOM MATERIALS FOR LESSON 7

## SOLICITATION-AWARD PHASE

**Lesson Learning  
Objective**

At the completion of this lesson, you will be able to:

- List and describe duties related to soliciting offers.
- List and describe duties related to evaluating bids and proposals.
- List and describe duties related to awarding the contract.

**Estimated Time**

Nine hours (excluding breaks and lunch).

**Method of Instruction**

Lecture, questions/answers, interactive viewgraphs, roleplays, and group exercises.

**Student Materials**

Text/Reference--Chapter 7.

Lesson 7 Classroom Materials







# **BASIC BUSINESS QUESTIONS BY FUNCTION**

## **7.1.1 Terms and Conditions**

What terms and conditions should be incorporated in the solicitation?

Write in Answer Here:

## **7.1.2 Soliciting Offers**

How can you best communicate the Government's need to the market, and how should you respond to feedback from the market on the solicitation?

Write in Answer Here:

## **7.2.1 Bid Evaluation**

Which, if any, of the submitted bids should be considered for award?

Write in Answer Here:

## **7.3.1 Proposal Evaluation**

Which, if any, of the submitted proposals should be considered for award, and what needs to be discussed with the offerors?

Write in Answer Here:



### **7.3.2 Discussions**

What strategies and tactics will you employ in discussing proposals with offerors, and how can you obtain and evaluate Best and Final Offers?

Write in Answer Here:

### **7.4.1 Selection for Award**

Is the offeror in line for award responsible, and is the offer free of any clerical or other mistakes?

Write in Answer Here:

### **7.4.2 Executing Awards**

How should the contract be executed and announced?

Write in Answer Here:

### **7.4.3 Protests**

How can any protests of the award be resolved?

Write in Answer Here:

### **7.4.4 Fraud**

Has there been any evidence of fraud or other misconduct in awarding the contract?

Write in Answer Here:



## 52.301 Solicitation provisions and contract clauses (Matrix).

Key:

Principle type and/or purpose of contract:

P or C = Provision or Clause  
IBR = Is Incorporation By Reference authorized?  
UCF = Uniform Contract Format Section, when applicable  
-----  
R = Required  
A = Required-When-Applicable  
O = Optional  
✓ = Revision

FP SUP = Fixed-Price Supply  
CR SUP = Cost-Reimbursement Supply  
FP R&D = Fixed-Price Research & Development  
CR R&D = Cost-Reimbursement Research & Development  
FP SVC = Fixed-Price Service  
CR SVC = Cost Reimbursement Service  
FP CON = Fixed-Price Construction  
CR CON = Cost Reimbursement Construction  
T&M LH = Time & Material/Labor Hours  
LMV = Leasing of Motor Vehicles

COM SVC = Communication Services  
DDR = Dismantling, Demolition, or Removal of Improvements  
A-E = Architect-Engineering  
FAC = Facilities  
IND DEL = Indefinite Delivery  
TRN = Transportation  
SP = Small Purchases  
UTL SVC = Utility Services

Provision or Clause	Prescribed In	P or C	IBR	UCF	Principle Type and/or Purpose of Contract																	
52.216-1 Type of Contract.	16.105	P	Yes	L	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	A E LMV	COM SVC	DDR	A-E	FAC	IND DEL	TRN	SP	UTL SVC
					A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.216-2 Economic Price Adjustment—Standard Supplies.	16.203-4(a)	C	No	I	O									O					O			
52.216-18 Ordering.	16.505(a)	C	Yes	I															A			
52.216-19 Delivery-Order Limitations.	16.505(b)	C	Yes	I															A			
52.216-20 Definite Quantity.	16.505(c)	C	Yes	I															A			
52.216-21 Requirements.	16.505(d)(1)	C	Yes	I															A			
52.216-22 Indefinite Quantity.	16.505(e)	C	Yes	I															A			
52.228-1 Bid Guarantee.	28.101-3(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.228-2 Additional Bond Security.	28.106-4	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.232-1 Payments.	32.111(a)(1)	C	Yes	I	R				R					R	A						A	A
52.232-12 Advance Payments.	32.412(a)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.232-13 Notice of Progress Payments.	32.502-3(a)	P	Yes	L	A		A		A					A	A		A	A	A			
52.232-14 Notice of Availability of Progress Payments Exclusively for Small Business Concerns.	32.502-3(b)(2)	P	Yes	L	A		A		A		A			A	A			A	A	A		
52.232-15 Progress Payments Not Included.	32.502-3(c)	P	Yes	M	A		A		A					A	A			A	A	A		
52.232-16 Progress Payments.	32.502-4(a)	C	Yes	I	A		A		A		A	A		A	A		A	A	A	A		
52.245-2 Government Property (Fixed-Price Contracts).	45.106(b)(1)	C	Yes	I	A		A		A		A			A		A		A	A		A	



## **EXCERPTS FROM FAR PARTS 16 (TYPES OF CONTRACTS) AND 52**

### **SUBPART 16.1—SELECTING CONTRACT TYPES**

#### **16.105 Solicitation provision.**

The contracting officer shall complete and insert the provision at 52.216-1, Type of Contract, in requests for proposals and in requests for quotations unless the solicitation is for (a) a small purchase (see Part 13) or (b) information or planning purposes (see 15.405).

### **PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

\* \* \* \* \*

#### **52.216-1 Type of Contract.**

As prescribed in 16.105, complete and insert the following provision in requests for proposals (RFP's) and requests for quotations (RFQ's), unless the solicitation is for (a) a small purchase (see Part 13) or (b) information or planning purposes (see 15.405).

#### **TYPE OF CONTRACT (APR 1984)**

The Government contemplates award of a . . . . . [Contracting  
Officer insert specific type of contract] contract resulting from this solicitation.  
(End of provision)  
(R 3-501(b) Sec L (iv))

---

### **Roleplay #1**

**Mark Smith:** What type of contract are you considering for the EPA procurement?

**Strong Jones:** Firm-fixed price.

**Mark Smith:** Why firm-fixed price instead of cost reimbursement? After all, this equipment is relatively new to the market.

---

### **Questions on the roleplay:**

“How would you answer Mark Smith? Do you agree with the decision made by Jones to solicit a firm fixed price type of contract?”



## **EXCERPTS FROM FAR PARTS 32 (CONTRACT FINANCING) AND 52**

### **SUBPART 32.1—GENERAL**

\* \* \* \* \*

#### **32.111 Contract clauses.**

(a) The contracting officer shall insert the following clauses, appropriately modified with respect to payment due dates, in accordance with agency regulations—

(1) The clause at 52.232-1, Payments, in solicitations and contracts when a fixed-price supply contract, a fixed-price service contract, or a contract for nonregulated communication services is contemplated; . . .

### **SUBPART 32.5—PROGRESS PAYMENTS BASED ON COSTS**

\* \* \* \* \*

#### **32.502-3 Solicitation provisions.**

(a) The contracting officer shall insert the provision at 52.232-13, Notice of Progress Payments, in invitations for bids and requests for proposals that include a Progress Payments clause.

(b)(1) Under the authority of the statutes cited in 32.101, an invitation for bids may restrict the availability of progress payments to small business concerns only.

(2) The contracting officer shall insert the provision at 52.232-14, Notice of Availability of Progress Payments Exclusively for Small Business Concerns, in invitations for bids if it is anticipated that (1) both small business concerns and others may submit bids in response to the same invitation and (2) only the small business bidders would need progress payments.

(c) The contracting officer shall insert the provision at 52.232-15, Progress Payments Not Included, in invitations for bids if the solicitation will not contain one of the provisions prescribed in paragraphs (a) and (b) above.

#### **32.502-4 Contract clauses.**

(a) The contracting officer shall insert the clause at 52.232-16, Progress Payments, in solicitations and fixed-price contracts under which the Government will provide progress payments based on costs.

## **PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

\* \* \* \* \*

#### **52.232-1 Payments.**

As prescribed in 32.111(a)(1), insert the following clause, appropriately modified with respect to payment due date in accordance with agency regulations, in solicitations and contracts when a fixed-price contract, a fixed-price service contract, or a contract for nonregulated communication services is contemplated:



PAYMENTS (APR 1984)

The Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the Government if—

- (a) The amount due on the deliveries warrants it; or
- (b) The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

(End of clause)

**52.232-13 Notice of Progress Payments.**

As prescribed in 32.502-3(a), insert the following provision in invitations for bids and requests for proposals that include a Progress Payments clause:

NOTICE OF PROGRESS PAYMENTS (APR 1984)

The need for customary progress payments conforming to the regulations in Subpart 32.5 of the Federal Acquisition Regulation (FAR) will not be considered as a handicap or adverse factor in the award of the contract. The Progress Payments clause included in this solicitation will be included in any resulting contract, modified or altered if necessary in accordance with subsection 52.232-16 and its Alternate I of the FAR. Even though the clause is included in the contract, the clause shall be inoperative during any time the contractor's accounting system and controls are determined by the Government to be inadequate for segregation and accumulation of contract costs.

(End of provision)

**52.232-16 Progress Payments.**

(a) As prescribed in 32.502-4(a), insert the following clause in solicitations and fixed-price contracts under which the Government will provide progress payments based on costs. A different customary rate for other than small business concerns may be substituted in accordance with 32.501-1 for the progress payment and liquidation rate indicated.

\* \* \* \* \*

PROGRESS PAYMENTS (AUG 1987)

Progress payments shall be made to the Contractor when requested as work progresses, but not more frequently than monthly in amounts approved by the Contracting Officer, under the following conditions:

(a) *Computation of amounts.* (1) Unless the Contractor requests a smaller amount, each progress payment shall be computed as (i) 80 percent of the Contractor's cumulative total costs under this contract, as shown by records maintained by the Contractor for the purpose of obtaining payment under Government contracts, plus (ii) progress payments to subcontractors (see paragraph (j) below), all less the sum of all previous progress payments made by the Government under this contract.

\* \* \* \* \*

(End of clause)



## EXCERPTS FROM FAR PARTS 45 (GOVERNMENT PROPERTY) AND 52

### SUBPART 45.1—GENERAL

\* \* \* \* \*

#### **45.106(b) Government property clauses.**

This section prescribes the principal Government property clauses. Other clauses pertaining to Government property are prescribed in Subpart 45.3.

\* \* \* \* \*

(b)(1) The contracting officer shall insert the clause at 52.245-2, Government Property (Fixed-Price Contracts), in solicitations and contracts when a fixed-price contract is contemplated . . . .

### PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

\* \* \* \* \*

#### **52.245-2 Government Property (Fixed-Price Contracts).**

As prescribed in 45.106(b)(1), insert the following clause:

#### GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS) (DEC 1989)

(a) *Government-furnished property.* (1) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications together with any related data and information that the Contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as “Government-furnished property”).

(2) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished “as is”) will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract’s delivery or performance dates.

\* \* \* \* \*

(e) *Property administration.* (1) The Contractor shall be responsible and accountable for all Government property provided under this contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this contract.

\* \* \* \* \*

(4) The Contractor represents that the contract price does not include any amount for repairs or replacement for which the Government is responsible. Repair or replacement of property for which the Contractor is responsible shall be accomplished by the Contractor at its own expense.

\* \* \* \* \*

(End of clause)



**SF 25 PERFORMANCE BOND**



## **SF 32 SOLICITATION, OFFER, AND AWARD**



**SF 1447 SOLICITATION/CONTRACT**



**SAMPLE CBD PAGE**



**SAMPLE CBD PAGE (CON'T)**



## Roleplay #2

- Contractor:** May I ask some questions about this RFP for upgrading pollution-control devices?
- Jones:** ?
- Contractor:** I don't understand the clause on progress payments. Can you explain it to me in English?
- Jones:** ?
- Contractor:** How much does the Government expect to pay for this contract? If I give you a proposal for \$9 million, would I be in the ballpark?
- Jones:** ?
- Contractor:** I believe paragraph 8 of the specification is ambiguous. As I read it, the requirement for replacing the filter support brackets is predicated on the assumption that rebuilding the filter adds significantly to its weight. However, my rebuilt filters only weigh a couple of pounds more than the originals. Is it okay if I base my proposal on the assumption that I can leave the existing brackets in place?
- Jones:** ?
- Contractor:** Can you at least tell me who I am competing against?
- Jones:** ?
- Contractor:** How about a ballpark figure of the number of companies competing for the award?
- Jones:** ?
- Contractor:** I plan to hand-deliver my proposal. Can you give me directions on how to find the building where we are suppose to deliver the proposals?
- Jones:** ?



## INTERACTIVE VIEWGRAPH

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### AMEND OR CANCEL?

	Amend or Cancel
1 . Requirement no longer exists	-----
2 . Correct or clarify ambiguous solicitation	-----
3 . Change quantity requirements, specifications, delivery requirements, or due date for offer	-----
4 . Funds are no longer available	-----
5 . Overall scope of proposed contract has changed substantially relative to the original synopsis and solicitation	-----

VG 7-3



**SF 30 AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT**



**SF 30 AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT**



## BID EVALUATION EXERCISE

An IFB was issued for:

Item 1: 1000 wooden pallets (size 56" X 56" X 8") to be used for storing and moving large quantities of paper for copy machines.

Item 2: 100 steel stacking cages to be used for storing up to 10 empty pallets.

- The items must meet the specific requirements of the FED specifications attached to the IFB.
- This is not a small business set-aside
- All or none bids are permitted
- Less than the total quantity of either item may be awarded
- Separate awards may be made for each line item

Eight bids were received as follows:

Bidder	Size Status	Item 1--Price	Item 2--Price	Total
A	Big Business	\$65.00 each	\$112.00 each	\$76,200
B	Small Business	\$60.00 each	\$98.00 each	\$69,800
C	Small Business	\$55.00 each (500 Only)	No Bid	\$27,500
D	Big Business	No Bid	\$92.00 each	\$9,200
E*	Small Business	\$54.00 each	\$93.00 each	\$63,300
F	Big Business	\$59.00 each	\$90.00 each	\$68,000
G	Small Business	\$59.00 each	\$91.00 each	\$68,100
H**	Small Business	\$53.00 each	No Bid	\$53,000

\* All or None

\*\* Product meets all requirements except size is 57" X 56" X 8" and contractor requests this be considered a minor informality.

**Identify the low, responsive bidder(s).**



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BID EVALUATION PROBLEM**



## Roleplay #3

**Jackson:** We received only one offer—from CLEANCO. That offer is \$4,500,640—\$1,500,640 higher than the Government estimate of \$3,000,000 per smokestack.

I called the other four known prospective offerors (SHACKELFORD, SCRUBBCO, BLAST, and SNUFF-IT). All declined to submit proposals because their plants are overbooked.

If we are going to negotiate with CLEANCO, the first step will be to obtain cost and pricing data.

---

### Questions on the roleplay:

“Even though the RFP did not require cost and pricing data, can Strong Jones request a cost breakdown from CLEANCO now?”

“If cost and pricing data are obtained from CLEANCO, should Mark Smith be invited to review some of the data?”



# **Analysis of CLEANCO'S Proposal for Upgrading Pollution Control Equipment at the Smoketown Plant**

**Prepared by Prudent Jackson, Esq.**

## **THE CLEANCO PROPOSAL (SUMMARY)**

<b>COST ELEMENTS</b>	<b>CLEANCO'S ESTIMATE (PER SMOKESTACK)</b>
Materials	\$1,263,600
Direct Labor	\$1,200,000
Indirect Costs	\$1,200,000
Other Costs	\$250,000
Subtotal	\$3,913,600
Fee	\$587,040
Total	\$4,500,640

## **SUMMARY OF PRINCIPAL FINDINGS OF THE TECHNICAL ANALYSIS**

- The technical analysis supports the proposed material mix, quantities, and scrap rates.
- The technical analysis does not support proposed engineering hours and recommends a 16% reduction in same.
- The technical analysis recommends reducing proposed carpentry and electrician labor by 300 hours, while adding that same amount to proposed hours for general labor.

## **SUMMARY OF PRINCIPAL AUDIT FINDINGS**

- The audit does not support the estimates of wage rates and direct material unit prices for any of these firms. On average, proposed wage rates and unit prices are 15% and 25% higher, respectively, than can be supported by actual outlays by the firms as of this date.
- The audit, on the other hand, documents recent inflation in wage rates and direct material unit prices. Wages paid by the firms have increased by 10-15% over the last three months. Invoiced unit prices for chemicals rose by 40-57% in that same period.
- The audit does not support the proposed indirect cost rate, which is figured as a percentage of direct labor costs. CLEANCO proposes a rate of 100%, based on historic average plant utilization. However, the audit only supports a rate of 92%, resulting from the fact that CLEANCO's plant is presently operating at full capacity.



## CONCLUSIONS

The following are my recommendations for prenegotiation objectives by major element of cost.

COST ELEMENTS	PROPOSED CONTRACT ESTIMATE	RECOMMENDED
Materials	\$1,263,600	\$947,700
Direct Labor	\$1,200,000	\$840,000
Indirect Costs	\$1,200,000	\$772,800
Other Costs	\$250,000	\$220,000
Subtotal	\$3,913,600	\$2,780,500
Profit	\$587,040	\$278,050
Total	\$4,500,640	\$3,058,550

### Materials

- CLEANCO based its estimate in part on projections of further spot shortages and continued rapid inflation in unit prices for critical chemicals and subassemblies during the next 18-24 months.
- Audit data offers some support for this assumption, in terms of trends in unit prices during the last several months.
- Demand is increasing for the upgrade kits and the market's capacity to meet that demand is limited.
- Nonetheless, CLEANCO has not sufficiently supported the percentages by which it has projected future increases in unit prices.
- Hence, as an opening position, recommended material costs have been reduced from the proposed costs to reflect current unit prices.

### Direct Labor

- Recommended labor costs have been reduced from the proposed costs to reflect the above findings and recommendations from the technical analysis on engineering hours and the skilled labor mix for installation.
- In addition, recommended labor costs have been reduced from the proposed costs to reflect current audited wage rates. CLEANCO has not sufficiently justified its assumption that the current wage rates, which are mostly locked in by current employment contracts, are going to continue to rise.

### Indirect Rates:

- Based on audit findings, indirect rates are figured at 92% of direct labor costs, rather than the proposed 100%.

### Profit:

- CLEANCO predicates its price on a profit rate of 15%.
- My analysis, attached, only supports a profit rate of 10%.



## **Roleplay #4**

**Jones:** Things look bad on the CLEANCO contract. I entered into discussions, but CLEANCO's representatives informed me that their offer was on a "take it or leave it basis". I gave them a deadline for submitting a "best and final" proposal, and the deadline has passed with no response.

**Jackson:** I may have a solution for you. In the past several weeks, I have received phone calls from several of the prospective offerors that did not submit proposals. They report that EPA has cancelled grants to State and local Governments for pollution control equipment. Consequently, some of their contracts with State and local Governments have been cancelled. SCRUBBCO and SHACKELFORD are now ready to do business with us. I have reason to believe that other of the prospective offerors may also be in the same boat.

---

### **Question on the roleplay:**

"If you were Strong Jones, what would you do upon hearing this report from Jackson?"



## INTERACTIVE VIEWGRAPH

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### MISTAKES IN BIDS

**Spot the mistakes in JJ's Bid**

**Examples:**

**1.    Line Item        Price**

<b>Type A Nails (50 lbs)</b>	<b>\$12.00</b>
<b>Type B Nails (50 lbs)</b>	<b>\$1220</b>
<b>Type C Nails (50 lbs)</b>	<b>\$12.40</b>
<b>Type D Nails (50 lbs)</b>	<b>\$4.45*</b>

\* Next low bid for Type D nails: \$20.19

**2.    Discounts**

1%/10 days, 2%/20 days, 5%/30 days

**3.    FOB Origin    \$3.00**  
**FOB Dest.    \$2.50**

VG 7-7

**ANSWERS:** (write in the answers as they are discussed in class)

1.

2.

3.



## Solicitation-Award Phase (Classroom Materials)

MEMORANDUM FOR THE RECORD

FROM: STRONG JONES

SUBJ: SHACKELFORD

I requested data from SHACKELFORD on Federal contracts that it had been awarded during the past five years. SHACKELFORD identified five such contracts. I called the contracting officers. One contracting officer stated that SHACKELFORD had rendered satisfactory performance.

The others reported that, on all four contracts,

- (1) SHACKELFORD delivered 6-9 months late.
- (2) The CORs rejected every initial deliverable.
- (3) At least one cure notice was sent to SHACKELFORD (in the worst case, five were sent).
- (4) SHACKELFORD corrected the work and, in consideration for late delivery, lowered the price.

These problems were presented to SHACKELFORD during discussions. SHACKELFORD blamed them on the fact that it's upgrade kit is state of the art and, at that time, was still being debugged. SHACKELFORD contends that these problems have now been resolved and that its more recent, private sector contracts have been trouble free.

However, within the past six months, SHACKELFORD's private sector customers have filed seventeen separate civil lawsuits against SHACKELFORD for breach of contract, alleging that SHACKELFORD upgrades are not satisfying contractual requirements for meeting the impending EPA standards.

On the other hand, SHACKELFORD has satisfied me that it:

- Has adequate financial resources, given the availability of progress payments.
- Notwithstanding its other contractual commitments, has sufficient plant capacity and staff at the ready to meet the delivery schedule.
- Has the necessary production facilities and equipment to make and install the upgrades.
- Is qualified and eligible to receive award under applicable laws and regulations.



## INTERACTIVE VIEWGRAPH

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### PREPARING AWARDS

**During sealed bidding and negotiation, the CO must ensure that certain things are done before awarding the contract.**

**Which of the following apply to sealed bidding, negotiations, or both?**

**Negotiations/Sealed Bidding**

- |  |       |
|--|-------|
| 1. Multiple awards, if applicable, were made correctly   | ----- |
| 2. The competitive range was fairly established  | ----- |
| 3. Score or rating has been determined according to the selection plan                                       | ----- |
| 4. Other factors stated in the RFP have been properly considered   | ----- |
| 5. Sufficient funds are available for obligation   | ----- |
| 6. All requirements of law, executive orders, regulations, and all other applicable procedures have been met | ----- |

VG 7-8







# CLASSROOM MATERIALS FOR LESSON 8

## POST-AWARD ADMINISTRATION PHASE

**Lesson Learning  
Objective**

At the completion of this lesson, you will be able to:

- List and describe duties related to contract administration "start-up".
- List and describe duties related to assuring quality and resolving performance problems.
- List and describe duties related to payment and accounting.
- Define "closeout".

**Estimated Time**

Four hours and twenty five minutes (excluding breaks and lunch).

**Method of Instruction**

Lecture, questions/answers, interactive viewgraphs, roleplays, and group exercises.

**Student Materials**

Text/Reference--Chapter 8.

Lesson 8 Classroom Materials



# **BASIC BUSINESS QUESTIONS BY FUNCTION**

## **8.1.1 Planning**

What are the critical post-award tasks and milestones, who should be responsible for each task and milestone, and should you provide an orientation to CORs and the contractor on their respective tasks and responsibilities under the contract?

Write in Answer Here:

## **8.1.2 Ordering**

When an indefinite-delivery contract has been established, how are goods and services ordered?

Write in Answer Here:

## **8.1.3 Subcontracting**

Should you consent to proposed subcontracts?

Write in Answer Here:



### **8.2.1 Monitoring, Inspection, and Acceptance**

How can you detect problems with the contract, what remedies are available, and how should the problems be resolved?

Write in Answer Here:

### **8.2.2 Property**

If property has been furnished to the contractor, how can you ensure that it will be used properly and returned whole to the Government?

Write in Answer Here:

### **8.2.3 Reporting Performance Problems**

Should you report poor performance for potential suspension or debarment?

Write in Answer Here:

### **8.3.1 Payment**

What is owed to the contractor, and when and how should payment be made?

Write in Answer Here:



### **8.3.2 Accounting and Defective Pricing**

Has the Government been adversely impacted by flaws in the contractor's estimating and accounting of costs and if so, how can restitution be made?

Write in Answer Here:

### **8.4.1 Closeout**

How do you closeout the contract?

Write in Answer Here:



## **INTERACTIVE VIEWGRAPH**

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### **ACO FUNCTIONS**

**Which are NOT contract administration functions typically delegated to ACOs?**

- 1 . Conduct postaward orientation conferences**
- 2 . Reduce scope of work to fit remaining available funds**
- 3 . Administer security requirements, if any**
- 4 . Perform property administration**
- 5 . Perform technical surveillance**
- 6 . Exercise an option**
- 7 . Monitor overall performance to help ensure timely deliveries**

VG 8-3



**EXCERPTS FROM FAR 52.244-1 ON SUBCONTRACTING**  
**SUBCONTRACTS (FIXED-PRICE CONTRACTS)**

\* \* \* \* \*

(a) This clause does not apply to firm-fixed-price contracts and fixed-price contracts with economic price adjustment. However, it does apply to subcontracts resulting from un-priced modifications to such contracts.

(b) . . . The Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract if the Contractor does not have an approved purchasing system and if the subcontract—

- (1) Is proposed to exceed \$100,000; or
- (2) Is one of a number of subcontracts with a single subcontractor, under this contract, for the same or related supplies or services, that in the aggregate are expected to exceed \$100,000.

(c) The advance notification required by paragraph (b) above shall include—

- (1) A description of the supplies or services to be subcontracted;
- (2) Identification of the type of subcontract to be used;
- (3) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the competition obtained;
- (4) The proposed subcontract price and the Contractor's cost or price analysis; . . . .

\* \* \* \* \*

(d) The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract for which advance notification is required under paragraph (b) above. . . .

\* \* \* \* \*

(f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (3) to relieve the Contractor of any responsibility for performing this contract.

(g) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations in subsection 15.903(d) of the Federal Acquisition Regulation (FAR).

\* \* \* \* \*

(End of clause)



## **EXCERPTS FROM FAR 52.209-6**

### **PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT<sup>1</sup>**

\* \* \* \* \*

(a) The Government suspends or debars Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of the small purchase limitation at FAR 13.000 with a Contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed the small purchase limitation at FAR 13.000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Procurement Programs). The notice must include the following:

- (1) The name of the subcontractor.
- (2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Procurement Programs.
- (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Procurement Programs.
- (4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(End of clause)

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<sup>1</sup>FAC 90-5.



## **EXCERPTS FROM FAR PART 52.246-2 ON INSPECTION AND ACCEPTANCE**

### **INSPECTION OF SUPPLIES—FIXED-PRICE**

\* \* \* \* \*

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering supplies under this contract. . . . As part of the system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the Government during contract performance and for as long afterwards as the contract requires. . . .

(c) The Government has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The Government shall perform inspections and tests in a manner that will not unduly delay the work. . . .

\* \* \* \* \*

(k) Inspections and tests by the Government do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance.

Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

\* \* \* \* \*

(End of clause)



## **EXCERPTS FROM SOME OF THE FAR CLAUSES RELATING TO EXCUSABLE DELAY**

### **52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE).**

\* \* \* \* \*

(c) . . . the Contractor shall not be liable . . . if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor.

Examples of such causes include

- (1) acts of God or of the public enemy,
- (2) acts of the Government in either its sovereign or contractual capacity,
- (3) fires,
- (4) floods,
- (5) epidemics,
- (6) quarantine restrictions,
- (7) strikes,
- (8) freight embargoes, and
- (9) unusually severe weather.

In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

\* \* \* \* \*

(End of clause)



## **EXCERPTS FROM FAR CLAUSE 52.212-13 RELATING TO STOP WORK ORDERS**

### **52.212-13 STOP-WORK ORDER.**

\* \* \* \* \*

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause.

\* \* \* \* \*

Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either—

- (1) Cancel the stop-work order; or
- (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work.

The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if—

- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
- (2) The Contractor asserts its right to the adjustment . . . .

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

\* \* \* \* \*

(End of clause)



## EXCERPTS FROM FAR CLAUSES IN PART 52 RELATED TO REMEDIES

### LIQUIDATED DAMAGES

#### 52.212-4 LIQUIDATED DAMAGES—SUPPLIES, SERVICES, OR RESEARCH AND DEVELOPMENT.

\* \* \* \* \*

(a) If the Contractor fails to deliver the supplies or perform the services within the time specified in this contract, or any extension, the Contractor shall, in place of actual damages, pay to the Government as fixed, agreed, and liquidated damages, for each calendar day of delay the sum of . . . . . [Contracting Officer insert amount].

\* \* \* \* \*

(c) The Contractor shall not be charged with liquidated damages when the delay in delivery or performance arises out of causes beyond the control and without the fault or negligence of the Contractor as defined in the Default—Fixed-Price Supply and Service clause in this contract.

(End of clause)

### REJECTION OF WORK PRIOR TO ACCEPTANCE

#### 52.246-2 INSPECTION OF SUPPLIES—FIXED-PRICE

\* \* \* \* \*

(f) The Government has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. The Government may reject nonconforming supplies with or without disposition instructions.

(g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. . . .

(h) If the Contractor fails to promptly remove, replace, or correct rejected supplies . . . , the Government may either

- (1) . . . remove, replace, or correct the supplies and charge the cost to the Contractor or
- (2) terminate the contract for default.

Unless the Contractor corrects or replaces the supplies within the delivery schedule, the Contracting Officer may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

\* \* \* \* \*



## **EXCERPTS FROM FAR CLAUSES IN PART 52 RELATED TO REMEDIES (CON'T)**

### **REJECTION OF WORK AFTER ACCEPTANCE**

#### **52.246-2 INSPECTION OF SUPPLIES—FIXED-PRICE**

\* \* \* \* \*

(k) . . . . Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

(l) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, the Government . . . shall have the right to require the Contractor

(1) at no increase in contract price, to correct or replace the defective or nonconforming supplies . . . or

(2) . . . repay such portion of the contract as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. . . .

If the Contractor fails to perform or act as required in (1) or (2) above . . . , the Government shall have the right . . . to replace or correct such supplies and charge to the Contractor the cost occasioned the Government thereby.

(End of clause)

### **WARRANTY RIGHTS**

#### **52.246-17 WARRANTY OF SUPPLIES OF A NONCOMPLEX NATURE.**

\* \* \* \* \*

(b) *Contractor's obligations.* (1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for . . . [Contracting Officer shall state specific period of time after delivery . . .]—(i) All supplies furnished under this contract will be free from defects in material or workmanship and will conform with all requirements of this contract . . . .

\* \* \* \* \*

(c) *Remedies available to the Government.* (1) The Contracting Officer shall give written notice to the Contractor of any breach of warranties in paragraph (b)(1) of this clause within . . . . . [Contracting Officer shall insert specific period of time; . . .].

(2) Within a reasonable time after the notice, the Contracting Officer may either—

(i) Require, by written notice, the prompt correction or replacement of any supplies or parts thereof . . . that do not conform with the requirements of this contract within the meaning of paragraph (b)(1) of this clause; or

(ii) Retain such supplies and reduce the contract price by an amount equitable under the circumstances.

\* \* \* \* \*

(End of clause)

## **EXCERPTS FROM FAR CLAUSES IN PART 52**



## **RELATED TO REMEDIES (CON'T)**

### **CURE NOTICE & TERMINATION FOR DEFAULT**

52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE).

\* \* \* \* \*

(a)(1) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—

- (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
- (ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or
- (iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

\* \* \* \* \*



## Roleplay #1

**Strong Jones:** Tomorrow, CLEANCO is scheduled to begin preparing its first batch of chemicals for the scrubbers. As I understand it, the chemicals will be mixed with water and sprayed into the scrubber chamber. The spray from the pump washes pollutants out of smoke from the plant's furnaces. The waste water, loaded with the pollutants, drains from scrubbing chamber into a pond. The pond drains into Byrd River. Is that a fair summary?

**Mark Smith:** Yes. I've confirmed that CLEANCO is on schedule, and that tomorrow, at 9:00 A.M., CLEANCO employees will begin mixing and blending the chemicals that are used in its secret recipe for the scrubber.

**Strong Jones:** So what's the problem?

**Mark Smith:** Yesterday, a friend of mine at EPA tipped me off that one of the ingredients of CLEANCO's recipe—pickling acid—is highly toxic. If we use CLEANCO's chemical formula in our scrubbers, we may wind up in violation of water pollution standards.

**Strong Jones:** Have you verified that possibility?

**Mark Smith:** No. I would need to check with CLEANCO to determine the likely amount of pickling acid in the waste water from the scrubbing chamber. I also would need to research the EPA standards for pickling acid in waste water.

**Strong Jones:** How long will this research take?

**Mark Smith:** Five days, max. However, my concern is that, in five days, CLEANCO will have already blended pickling acid into the first batch. We'd have to throw that batch away and ask CLEANCO to mix a new batch. That would be extremely costly.

**Strong Jones:** Doesn't the contract require, as part of its performance specifications, that waste water from the scrubbing chambers meet current EPA water pollution standards?

**Mark Smith:** Yes. We have 30 days to test the installed upgrade against EPA air and water pollution standards prior to acceptance.

**Strong Jones:** OK. I'll call CLEANCO. You call the EPA.

### Questions:

1. Should Strong Jones issue a stop work order?
2. Suppose, based on the call from Strong Jones, CLEANCO decides to change its chemical formula—leaving the pickling acid out. If, as a result, CLEANCO is late in delivering the required drums of its chemical formula, is the delay excusable?
3. What, if any, contractual remedies should Jones contemplate?
4. If you were Strong Jones, what would you say to CLEANCO?



## EXCERPTS FROM FAR 52.245-2 ON PROPERTY

### 52.245-2 GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS).

\* \* \* \* \*

(a) *Government-furnished property.* (1) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications . . . .

(2) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished “as is”) will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract’s delivery or performance dates.

\* \* \* \* \*

(4) If Government-furnished property is not delivered to the Contractor by the required time, the Contracting Officer shall, upon the Contractor’s timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

\* \* \* \* \*

(c) *Title in Government property.* (1) The Government shall retain title to all Government-furnished property.

\* \* \* \* \*

(d) *Use of Government property.* The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

(e) *Property administration.* (1) The Contractor shall be responsible and accountable for all Government property provided under this contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this contract.

(2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR.

\* \* \* \* \*

(g) *Risk of loss.* Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Contractor or upon passage of title to the Government under paragraph (c) of this clause. However, the Contractor is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this contract.

\* \* \* \* \*

(End of clause)



### **SETTING FOR TOPIC 8.3.1: PAYMENT**

“CLEANCO has submitted a request for progress payments, along with an invoice for costs incurred during the prior month of work under the contract. The total amount of the invoice is \$145,000, an amount equal to 100% of the incurred costs. Among the invoiced items is \$35,000 for a company car—a new Jaguar (\$35,000 being the sticker price).

With its invoice, CLEANCO has included a request that the Government check be paid directly to its bank.

On the same day that CLEANCO's invoice arrived:

1. An IRS auditor notified Strong Jones that CLEANCO owes the Government \$20,000 in back taxes.
2. Jones received a phone call from J.P. Tool and Die, one of CLEANCO's suppliers. The President of J.P. Tool and Die complained that CLEANCO is 3 months delinquent in paying a bill of \$30,000 for parts that are being used in the upgrade.

Jones called CLEANCO about the complaint from J. P. Tool & Die. CLEANCO replied that the complaint is of no concern to Jones, and that CLEANCO will pay J.P. Tool and Die and its other suppliers when it is good and ready.

In the same conversation, CLEANCO complained bitterly that its costs are going to greatly exceed the negotiated fixed price.”



## EXCERPTS FROM FAR 52.232-20 ON LIMITATION OF COSTS

### 52.232-20 LIMITATION OF COST

\* \* \* \* \*

(a) The parties estimate that performance of this contract, exclusive of any fee, will not cost the Government more than . . . the estimated cost specified in the Schedule . . . . The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within the estimated cost. . . . .

(b) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that—

- (1) The costs the Contractor expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the Schedule; or
- (2) The total cost for the performance of this contract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

(c) As part of the notification, the Contractor shall provide the Contracting Officer a revised estimate of the total cost of performing this contract.

(d) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause—

- (1) The Government is not obligated to reimburse the Contractor for costs incurred in excess of (i) the estimated cost specified in the Schedule . . . . and
- (2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of the estimated cost specified in the Schedule, until the Contracting Officer (i) notifies the Contractor in writing that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this contract.

\* \* \* \* \*

(End of clause)



## EXCERPTS FROM FAR 52.232-16 RELATED TO ALLOWABILITY

### 52.232-16 PROGRESS PAYMENTS.

\* \* \* \* \*

(a) *Computation of amounts.* (1) Unless the Contractor requests a smaller amount, each progress payment shall be computed as . . . 80 percent of the Contractor's cumulative total costs under this contract . . . less the sum of all previous progress payments made by the Government under this contract. . .

(2) The following conditions apply. . . :

- (i) The costs of supplies and services purchased by the Contractor directly for this contract may be included only after payment by cash, check, or other form of actual payment.
- (ii) Costs for the following may be included when incurred. . . . :
  - (A) Materials issued from the Contractor's stores inventory and placed in the production process for use on this contract.
  - (B) Direct labor, direct travel, and other direct in-house costs.
  - (C) Properly allocable and allowable indirect costs.

\* \* \* \* \*

(3) The Contractor shall not include the following in [their invoices for progress payments] . . . Costs that are not reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices.

\* \* \* \* \*

(5) The total amount of progress payments shall not exceed 80 percent of the total contract price.

\* \* \* \* \*

(End of clause)



## EXCERPTS FROM FAR 52.232-16 RELATED TO REDUCING OR SUSPENDING PROGRESS PAYMENTS

### 52.232-16 PROGRESS PAYMENTS.

\* \* \* \* \*

(c) *Reduction or suspension.* The Contracting Officer may reduce or suspend progress payments, increase the rate of liquidation, or take a combination of these actions, after finding on substantial evidence any of the following conditions:

- (1) The Contractor failed to comply with any material requirement of this contract . . . .
- (2) Performance of this contract is endangered by the Contractor's (i) failure to make progress or (ii) unsatisfactory financial condition.
- (3) Inventory allocated to this contract substantially exceeds reasonable requirements.
- (4) The Contractor is delinquent in payment of the costs of performing this contract in the ordinary course of business.
- (5) The unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract.

\* \* \* \* \*



**EXCERPTS FROM FAR 52.216-4  
RELATED TO ECONOMIC PRICE ADJUSTMENTS**

**52.216-4 ECONOMIC PRICE ADJUSTMENT—LABOR AND MATERIAL.**

\* \* \* \* \*

(a) The Contractor shall notify the Contracting Officer if . . . the rate of pay for labor (including fringe benefits) or the unit prices for material shown in the Schedule either increase or decrease. The Contractor shall furnish this notice within 60 days after the increase or decrease, or within any additional period that the Contracting Officer may approve in writing, but not later than the date of final payment under this contract.

The notice shall include the Contractor's proposal for an adjustment in the contract unit prices to be negotiated under paragraph (b) below, and shall include, in the form required by the Contracting Officer, supporting data explaining the cause, effective date, and amount of the increase or decrease and the amount of the Contractor's adjustment proposal.

(b) Promptly after the Contracting Officer receives the notice and data under paragraph (a) above, the Contracting Officer and the Contractor shall negotiate a price adjustment in the contract unit prices and its effective date. . . . The Contracting Officer shall modify this contract (1) to include the price adjustment and its effective date and (2) to revise the labor rates (including fringe benefits) or unit prices of material as shown in the Schedule to reflect the increases or decreases resulting from the adjustment. The Contractor shall continue performance pending agreement on, or determination of, any adjustment and its effective date.

(c) Any price adjustment under this clause is subject to the following limitations:

- (1) Any adjustment shall be limited to the effect on unit prices of the increases or decreases . . . .

\* \* \* \* \*

- (4) The aggregate of the increases in any contract unit price made under this clause shall not exceed 10 percent of the original unit price. There is no percentage limitation on the amount of decreases that may be made under this clause.

\* \* \* \* \*

(End of clause)



## EXCERPTS FROM FAR 52.232-16 RELATED TO ACCOUNTING

### 52.232-16 PROGRESS PAYMENTS.

\* \* \* \* \*

(c) *Reduction or suspension.* The Contracting Officer may reduce or suspend progress payments, increase the rate of liquidation, or take a combination of these actions, after finding on substantial evidence any of the following conditions:

- (1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (f) and (g) below).

\* \* \* \* \*

(f) *Control of costs and property.* The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause.

(g) *Reports and access to records.* The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information reasonably requested by the Contracting Officer for the administration of this clause. Also, the Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's books, records, and accounts.

\* \* \* \* \*



## Post-Award Administration Phase (Classroom Materials)



# LESSON 9

## MODIFICATIONS, TERMINATIONS, AND CLAIMS

**Lesson Learning Objective**

At the completion of this lesson, you will be able to:

- List and describe duties related to contract modifications.
- List and describe duties related to termination.
- List specialized areas.

**Estimated Time**

One hour and 15 minutes (excluding breaks and lunch).

**Method of Instruction**

Lecture, questions/answers, interactive viewgraphs, roleplays, and group exercises.

**Student Materials**

Text/Reference--Chapter 9.

Lesson 9 Classroom Materials



# **BASIC BUSINESS QUESTIONS BY FUNCTION**

## **9.1 Contract Modification**

Should you modify the contract, and, if so, how?

Write in Answer Here:

## **9.2 Termination**

Should you terminate the contract, and, if so, how?

Write in Answer Here:

## **9.3 Claims**

How should you respond to the contractor's claim?

Write in Answer Here:

## **9.4 Specialized Areas**

What are the specialized areas of acquisition?



## EXCERPTS FROM A TYPICAL CHANGES CLAUSE

### 52.243-1 CHANGES—FIXED-PRICE

\* \* \* \* \*

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.
- (2) Method of shipment or packing.
- (3) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

\* \* \* \* \*

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)



## **EXCERPTS FROM FAR 52.249-2: TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED PRICE)**

\* \* \* \* \*

(a) The Government may terminate performance of work under this contract . . . if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts or orders . . . .
- (3) Terminate all subcontracts . . . .

\* \* \* \* \*

- (6) As directed by the Contracting Officer, transfer title and deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.

\* \* \* \* \*

(d) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer. . . .

(e) Subject to paragraph (d) above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. . . . The contract shall be amended, and the Contractor paid the agreed amount. . . .

(f) If the Contractor and the Contracting Officer fail to agree . . . , the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows . . . . :

- (1) The contract price for completed supplies or services accepted by the Government . . . [but] not previously paid for, adjusted for any saving of freight and other charges.
- (2) The total of—
  - (i) The costs incurred in the performance of the work terminated . . . ;
  - (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts . . . ; and
  - (iii) A [reasonable] . . . profit on subdivision (i) above . . . ; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit . . . and shall reduce the settlement to reflect the indicated rate of loss.

\* \* \* \* \*

(i) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under [¶f, among others] . . .

\* \* \* \* \*



## **EXCERPTS FROM FAR 52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE)**

\* \* \* \* \*

(a)(1) The Government may, . . . by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—

- (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
- (ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or
- (iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire . . . supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) . . . the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. . . .

\* \* \* \* \*

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay the contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. . . .

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)



## EXCERPTS FROM FAR 52.233-1 DISPUTES

\* \* \* \* \*

(a) This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) “Claim,” as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract.

\* \* \* \* \*

However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph (d)(2) below. . . .

\* \* \* \* \*

(d)(1) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) For Contractor claims exceeding \$50,000, the Contractor shall submit with the claim a certification that—

- (i) The claim is made in good faith;
- (ii) Supporting data are accurate and complete to the best of the Contractor’s knowledge and belief; and
- (iii) The amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.

\* \* \* \* \*

(e) For Contractor claims of \$50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$50,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer’s decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(h) The Government shall pay interest on the amount found due and unpaid from  
(1) the date the Contracting Officer receives the claim (properly certified if required), or  
(2) the date payment otherwise would be due, if that date is later, until the date of payment. . . .<sup>1</sup>

\* \* \* \* \*

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(End of clause)

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<sup>1</sup>FAC 90-10



# CLASSROOM MATERIALS FOR LESSON 10

## STANDARDS OF CONDUCT

Lesson Learning Objective	At the completion of this lesson, you will be able to: <ul style="list-style-type: none"><li>• Identify standards of conduct that apply to the acquisition process.</li><li>• Recognize prohibited activities.</li><li>• Identify the penalties for prohibited conduct.</li></ul>
<b><u>Estimated Time</u></b>	90 minutes.
<b><u>Method of Instruction</u></b>	Lecture, questions/ answers, interactive viewgraph, and a roleplay.
<b><u>Student Materials</u></b>	Text/Reference--Chapter 10 Lesson 10 Classroom Materials



## **INTERACTIVE VIEWGRAPH**

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### **STANDARDS OF CONDUCT**

**Apply to all Government personnel including:**

- **Contracting Personnel**
- **Technical and Engineering Personnel**
- **Financial Personnel**
- **Clerical, Support, and Administrative Personnel**

**Can you name any others?**

VG 10-1



**Roleplay #1**

1. Narrator: Dan Ward is a quality assurance inspector for the small engine acquisition division of the National Supply Agency. Dan is preparing to drive across town to visit Mighty-Mite Manufacturing (MMM) Company, one of the agency's major suppliers, to spot check quality control on some engines now in production.

As Dan is leaving his office, he sees Liz Robey, a new contract specialist at the agency. After she completes her training program, Liz will be working in the contract branch that buys engines.

2. Dan: Hi Liz. How are you getting along?
3. Liz: Pretty good thanks. I just can't wait to complete my training so that I can start handling some buys.
4. Dan: I can understand that. Say, I'm going to visit MMM now. You will be working with them soon so why not come along and get acquainted with the people there? You can also take a plant tour.
5. Liz: Great idea! I have some time today. I'll tell my supervisor. Meet you in the parking lot in 5 minutes.
6. Narrator: Soon Dan and Liz arrive at MMM. Dan takes her into the front office to meet the plant manager, J.B. Stein and the sales manger, Dave Smith. After some small talk, the four go on a plant tour.
7. Dave: (to Dan) By the way Dan, I hear you might be changing the 2 horsepower engine specification. What's up?
8. Dan: (to Dave) There have been some recent developments in solid-state circuitry that may be useful.
9. Dave: In what way?
10. Dan: We believe the circuitry can be adapted for use in the alternators for small engines.
11. Dave: Interesting. Whose circuits look good?
12. Dan: White Electronics. We think they are ahead of all of the rest. In fact, we plan to purchase a few 2 horsepower engines using a specification that requires the White type of circuitry. Their breakthrough was to use a double-grounded resistor. Simple but effective.
13. Dave: When will you issue your solicitation?
14. Dan: I can't say for sure, but I believe about 3 months from now.
15. Liz: Say you guys, I have seen enough, I believe we've been walking for over an hour.
16. J.B. Right. Let's go back to my office. I'll have the cafeteria send up some coffee and pastries.



## Standards of Conduct (Classroom Materials)

17. Liz, Dan  
& Dave: Let's Go!
18. Narrator: After enjoying the coffee and pastries, Dan and Liz prepare to leave.
19. J.B. (to Dan) Stop by the receptionist's desk and have her stamp your parking ticket. No use in you paying those ridiculous commercial rates.
20. Dan: OK J.B., thanks.
21. Narrator: Dan and Liz are driving back to the agency.
22. Liz: That was a good experience for me. I really look forward to working with them. By the way, how did the inspection go?
23. Dan: I didn't do much inspecting because I know they are good producers. I stop by frequently though. It gives me a chance to relax and Dave and I enjoy our technical conversations with each other.
24. Liz: I know how you feel. J.B. is great too. In fact, I want to stay in close contact with him. He said that after I learn the ropes he might be able to offer me a good job on his administrative staff.
25. Dan: Yeah, he and Dave have talked to me about that too. But, I like where I am better. I get to take interesting trips and do a little wheeling and dealing with our contractors.

**This is a gross exaggeration of a lack of integrity on the part of both Government and contractor. Name all the standards of conduct violated in this roleplay. Reference the problems by the numbers next to each part of the script.**